

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DIS-
TRICT IN AND FOR UTAH COUNTY,
STATE OF UTAH.

CALEB TANNER,
Plaintiff,)

vs)

Provo Reservoir Company,
a corporation, Provo
Reservoir Water Users
Company, a corporation,
Blue Cliff Canal Company, a
corporation, North Union
Irrigation Company, a cor-
poration, Provo Bench Canal
& Irrigation Company, a cor-
poration, T.F. Wentz as
Commissioner of Provo River,
Defendants,)

C O M P L A I N T.

The plaintiff complains of the defendants and for
a first cause of action alleges,-

1. That at all the times herein mentioned Provo
Reservoir Company was, and now is, a corporation, duly or-
ganized and existing under and by virtue of the laws of the
State of Utah. That ever since on or about the 22nd. day ^a
of July, 1924, Provo Reservoir Water Users Company has been,
and now is, a corporation, duly organized and existing un-
der and by virtue of the laws of the State of Utah. That
each of said defendants corporation Provo Reservoir Company
and Provo Reservoir Water Users Company are and were or-
ganized for the general purpose of acquiring water rights
for irrigation and other purposes and for distributing and

disposing of the same and for the further purpose of acquiring, owing, using, controlling, supervising and operating water, water rights, water right projects, and also reservoirs, dams, diversion works, canals, laterals and other works used in connection with water right projects.

2. That at all the times herein mentioned the defendant Blue Cliff Canal Company was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, and said corporation was organized for the general purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said defendant corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

3. That the defendant North Union Irrigation Company at all the times herein mentioned was, and now is, a corporation, duly organized and existing under and by virtue of the laws of the State of Utah, and said corporation was organized for the purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

4. That the defendant Provo Bench Canal and Irrigation Company at all the times herein mentioned was and

is a corporation, duly organized and existing under and by virtue of the laws of the State of Utah; that said corporation was organized for the purpose of acquiring, owning, controlling and distributing water for irrigation and other purposes. That said defendant corporation owns or claims to own some right, title or interest in and to the particular reservoirs, canals, diverting works and irrigation system hereinafter mentioned and described.

5. That the defendants Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliff Canal Company, a corporation, North Union Irrigation Company, a corporation, and Provo Bench Canal and Irrigation Company, a corporation, each has its office and principal place of business in Utah County, State of Utah, and all of said defendant corporations are residents of Utah County, State of Utah.

6. That the defendant T. F. Wentz now is, and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in that civil action known and designated as - Cause No.2888 - in the above entitled court. That said defendant T.F.Wentz now is, and for many years last past he has been, under the appointment and orders of the above entitled Court, in active charge as said commissioner of the control, regulation and distribution of all the waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years

last past it has been, the duty of the defendant T. F. Wentz, as said commissioner, to control, regulate and distribute the waters of said Provo River in the main channel and bed of said river and from the main channel and bed of said river into the various canals and diversion works diverting, taking and receiving water from said Provo River.

7. That on or about the 4th. day of August, 1909, one Jens C. Jensen made and entered into a certain contract and agreement with the said defendant Provo Reservoir Company, a copy of which said contract is hereby^{to} attached and marked "Exhibit A"; that said contract was duly acknowledged so as to entitle the same to be recorded, and the same was afterwards to wit: on August 16, 1909, duly recorded in the office of the County Recorder of Utah County, Utah, in Book 108 of mortgages, at page 305.

8. That subsequent to the date on which said contract was made and entered into between said Jens C. Jensen and the Provo Reservoir Company said Jens C. Jensen did perform all things required to be performed by him thereunder and on or about the 29th. day of November, 1918, said defendant Provo Reservoir Company made, executed and delivered to said Jens C. Jensen a certain deed for water right, a copy of which is hereto attached and marked "Exhibit B."

9. That on or about the 22nd. day of September, 1911, said Jens C. Jensen made and entered into a certain contract and agreement with the defendant Provo Reservoir Company, a copy of which is hereto attached, marked "Exhibit C," that said contract was duly acknowledged so as to entitle the same to be recorded and the same was thereafter on September 25th, 1911, duly recorded in the office of the County Recorder of Utah County, Utah, in Book 126 of Mortgage at page 690; that subsequent to the date

the execution of
of/said contract between said Jens C. Jensen and the defend-
ant Provo Reservoir Company, said Jens C. Jensen did perform
any and all things required to be performed by him thereunder
and on or about the 29th. day of November, 1918, said defend-
ant Provo Reservoir Company made, executed and delivered to
said Jens C. Jensen a certain deed for water right, a copy of
which is hereto attached and marked "Exhibit D."

9 $\frac{1}{2}$. That on or about the 28th. day of December,
1912, the defendant Provo Reservoir Company made, executed
and delivered to said Jens C. Jensen one certain deed for water
right, a copy of which is hereto attached and marked "Exhibit
E."

10. That the particular contract hereinbefore
set out and referred to as Exhibit A, was duly recorded in
the office of the County Recorder of Utah County, Utah, in
Book 108 of mortgages, at page 305 thereof on or about the
16th. day of August, 1909. That the particular contract here-
inbefore set out and referred to as Exhibit C, was recorded
in the office of the County Recorder of Utah County, Utah, in
book 126 of mortgages at page 690 thereof on or about the
25th. day of September, 1911.

11. That said Preambles and Resolution of said
Provo Reservoir Company for the year 1909 referred to in said
deeds contains the following, to-wit:

"Whereas, Provo Reservoir Company, a corporation
is the owner of certain water rights and applications
to appropriate waters for irrigation purposes, des-
cribed in its articles of Incorporation, and intends
to secure other water rights and interests in addition
thereto; which appropriations, rights and interests it
proposes to utilize for the purpose of furnishing a
more adequate supply of water with which to irrigate

the lands described in the applications to appropriate water for irrigation, etc., above referred to, together with other lands that are capable of irrigation, with waters from Provo river, known as the Provo River System; and whereas, in order to hold said water rights and applications to appropriate waters, it is by law required that the waters applied for and thereby covered, be utilized for the irrigation of the lands described in the said applications therefor; and whereas in some of the applications for said appropriations, large areas of land upon which it is intended to use said waters, are described; and whereas, persons and parties, other than this corporation, own the land so described, and upon which it is intended to use said waters, it becomes necessary, in order to apply said water upon said lands, that this company as the owner and holder of said water rights, and the owners of said lands upon which it is to be used, enter into agreements and stipulations, specifying the terms and conditions upon which said land owners will purchase and utilize said waters;"

12. That said Preambles and Resolutions of said Provo Reservoir Company for the year 1909, following the part thereof hereinbefore quoted in Paragraph 11 herein further contains the following provisions, to-wit:

"Therefore be it Resolved, That this Company, by and through its President, is hereby authorized and empowered on behalf of and as the act and deed of this corporation to enter into contracts in writing with such of the owners of the lands described in said applications and the owners of such other lands as may be irrigated from said system, as will subscribe for water rights under any of the rights, or applications now owned and held by this Company and any other rights, appropriations, or interests which said Company may hereafter acquire, to waters for said system."

13. That said Preambles and Resolutions for said year 1909 contains the following further provisions, to-wit:

"In order to convey the waters from the several points of diversion named in said application, and from the points where the Company has or may acquire rights, the Company shall build a substantial canal system, consisting of reservoirs, earthen or concrete canals, concrete or other substantial flumes, tunnels, and wood or steel pipes, for the purpose of storing and conveying said waters to a point located near the center of Section 12, in Township 6 South, of Range 2

East, of Salt Lake Meridian, to be known as the point of General Delivery."

"The Company agrees, that when the said contract price for any of the said water rights and the water rates hereinbefore provided for, shall have been fully paid, and the conditions by the Consumer covenanted to be performed, have been complied with, it will execute to and in favor of said Consumer, his heirs and assigns, a deed, conveying to him, or them, the said water right, together with such pro rata interest in said system as his interest in said water rights shall represent; and thereafter, as to him, the annual rates for maintenance and repair of the system hereinbefore provided for, shall cease, and he shall become an owner in fee simple of an undivided interest in said system to the extent of the ratio which the number of acres and class of right purchased or acquired by him shall at such time or at any subsequent time bear to the entire number of acres and class supplied with water from said system."

"The Company reserves the control, management, operation and regulation of the said system until January 1st, 1920, after which time, such control, etc., shall be exercised by those interested in proportion to their respective interests."

14. That the Preambles and Resolutions of said defendant Provo Reservoir Company for the year 1911 referred to in said Exhibit "D" contains a provision identical with that part of the Preamble for the year 1909 hereinbefore set forth in Paragraph 11 hereof.

15. That the Preambles and Resolutions of said defendant Provo Reservoir Company for the year 1911 referred to in said Exhibit "D" contains the following further provision,-

"THEREFORE BE IT RESOLVED, That this Company, by and through its President or Vice-President, thereunto hereby authorized, enter into contracts in writing with such of the owners of the lands described in said applications and the owners of such other lands as may be irrigated from said system, as will subscribe for water rights under any of the rights or applications now owned and held by this Company and any other rights,

appropriations or interests which said Company may hereafter acquire, to waters for said system."

"The Company agrees, that when the said contract price for any of the said water rights and the water rates hereinbefore provided for, shall have been fully paid, and the conditions by the Consumer, covenanted to be performed, have been complied with, it will execute to and in favor of said Consumer, his heirs or assigns, a deed, conveying to him, or them, such pro rata interest in said system as his (or their) interest in said water rights shall represent; and he (or they) shall become owner (or owners) in fee simple of an undivided interest in said system to the extent of the ratio which the number of acres and class of right purchased or acquired by him (or them) shall at such time or any subsequent time bear to the entire number of acres and class supplied with water from said system. Provided; That if such payment be made and such deed be issued prior to the 1st day of January, A.D. 1920, it shall not become operative absolutely until after said date, and the annual rates for maintenance and repair of the system hereinbefore provided for shall continue until the said 1st day of January, A.D. 1920."

"The Company reserves the full and complete control, management, operation and regulation of the said system until January 1st, 1920, after which time such control, etc., shall be exercised jointly by the Company and those interested in proportion to their respective interests."

16. That pursuant to said Preambles and Resolutions of said defendant Provo Reservoir Company for the years 1909 and 1911, said defendant Provo Reservoir Company constructed an irrigation system consisting of reservoirs, canals, flumes, tunnels, pipes and diverting works for the purpose of diverting and conveying the waters by it deeded as hereinbefore alleged to said Jens C. Jensen, and other holders of similar contracts and deeds from said defendant

Provo Reservoir Company to the point of general delivery mentioned in said Preambles and Resolutions towit:

"To a point near the center of Section 12, Township 6 South, Range 2 East of the Salt Lake Base and Meridian in Utah County, Utah."

That said defendant Provo Reservoir Company constructed a canal extending from a point in Provo Canyon known as Heiselt's in Utah County, Utah, thence down said Provo Canyon on the southerly side thereof to the mouth of said canyon, thence west across Provo River and onto the bench on the westerly side of said Provo River near the mouth of said canyon to a point approximately the center - of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian - said point being the point of general delivery referred to and described in said Preambles and Resolutions of said defendant Provo Reservoir Company for the years 1909 and 1911.

That said course of said canal is more particularly described as follows, towit:

Beginning at a point South 48° 52' West 1320 feet from the quarter corner between Sections 5 and 6, Township 6 South, Range 3 East, Salt Lake Base and Meridian; thence along a course south 43° 30' West 2510 feet, the canal curving away from the course to the left reaching a maximum of 160 feet therefrom at a point 660 feet from the beginning of the course; thence continuing the canal reaches coincidence with the course at a point 1485 feet from beginning; thence continuing along said course to its termination; thence

South 34° West 3000 feet, the canal curving away from the course to the left reaching a maximum distance therefrom of 310 feet at a point 530 feet from the beginning of the course; thence reaching coincidence with the course at a point 2245 feet from its beginning; thence along said course to its termination; thence

North 80° 30' West 1000 feet; thence South 56°

30' West 900 feet; thence West 2280 feet to the head of the Iona Lateral being 630 feet West of the center of Section 12, Township 6 South, Range 2 East of Salt Lake Base and Meridian, which said point is the point of general delivery referred to in the Preambles and Resolutions of the said Provo Reservoir Company for the years 1909 and 1911, hereinabove referred to, and which said point is also the point of diversion of the Iona Lateral from said canal hereinabove specifically described.

17. That said defendant Provo Reservoir Company, subsequent to the execution of the said contracts with said Jens C. Jensen, as hereinbefore alleged and described, entered upon the duty of making delivery of the waters mentioned in and represented by said contracts and deeds, copies of which are hereto attached, - to a point near the center of said Section 12 - the point of general delivery, and to the head of said Iona Lateral, for the use and benefit of said Jens C. Jensen.

18. That on or about the 2nd. day of July, 1924, certain holders of deeds from said defendant Provo Reservoir Company identical in terms with the deeds so made and executed and delivered by said defendant Provo Reservoir Company to said Jens C. Jensen, and others, including the said defendant Provo Reservoir Company organized a corporation known as Provo Reservoir Water Users Company, which said corporation is named as a defendant herein. That said defendant Provo Reservoir Water Users Company since its organization has assumed and attempted to distribute, and now assumes and attempts to

distribute and claims the right to distribute the waters of said irrigation system; that the defendant Provo Reservoir Company and the defendant Provo Reservoir Water Users Company now assume to direct the defendant T.F. Wentz as said water commissioner of said Provo River in the distribution of all of the waters in said Provo Reservoir Company's Provo River irrigation system; that the defendant T.F. Wentz, as said commissioner now assumes that the defendant Provo Reservoir Company and the defendant Provo Reservoir Water Users Company have the right to direct the distribution by him of the waters so granted and conveyed to the said Jens C. Jensen by the defendant Provo Reservoir Company as represented in said deeds, copies of which are attached hereto.* That neither said Jens C. Jensen nor this plaintiff, has assigned to said Provo Reservoir Water Users Company any of the said water rights represented by said deeds, copies of which are attached hereto.+ Neither has said Jens C. Jensen, nor this plaintiff in any manner, or at all, authorized or directed said defendant Provo Reservoir Water Users Company to distribute said waters represented by said deeds. Plaintiff further alleges that he is informed and believes that said defendant Provo Reservoir Water Users Company has no right, title or interest in the said irrigation system of said Provo Reservoir Company, or in the said canal so constructed by said Provo Reservoir Company, and particularly described in Paragraph 16 herein, except such interest as has

been transferred to said defendant Provo Reservoir Water Users Company by the owners of water rights in said defendant Provo Reservoir Company's irrigation system, and such other interests as may have been conveyed to it by the defendant Provo Reservoir Company.

19. That on or about the 3rd. day of March, 1925, said Jens C. Jensen, by good and sufficient deeds, made, executed and delivered by him to the plaintiff, duly sold and transferred to the plaintiff all his right, title and interest in and to the water and water rights, together with all other rights represented by the said deeds so executed and delivered to the said Jens C. Jensen by the defendant Provo Reservoir Company, copies of which are attached hereto and marked Exhibits B, D and E, and that the plaintiff at all times since said 3rd. day of March, 1925, has been, and now is, the owner and entitled to the use of said water rights and all other rights and privileges represented by said deeds.

20. That the plaintiff has not conveyed to said defendant Provo Reservoir Water Users Company, or to any one else, any of the said water rights and privileges deeded and transferred to the plaintiff by said Jens C. Jensen as hereinbefore alleged. That the plaintiff now is, and at all times since the third day of March, 1925, he has been, the owner of all said water rights and privileges; that at all times since the third day of March, 1925, the plaintiff has

been, and he now is, a joint owner with the defendants herein of the said irrigation system constructed by the defendant Provo Reservoir Company, as hereinbefore alleged. That at all times since the third day of March, 1925, the plaintiff has been, and now is, a joint owner with the defendants herein of said canal constructed in Provo Canyon as hereinbefore alleged, and particularly described in Paragraph 16 herein, and plaintiff, ever since the third day of March, 1925, has been, and he now is, a tenant in common with the defendants herein in said canal and a tenant in common with the defendants herein in and to any and all interest in said irrigation system so constructed by the defendant Provo Reservoir Company, as hereinbefore alleged.

21. That under said contracts and deeds, copies of which are attached hereto and marked Exhibits A.B.C.D and E, and by virtue of the transfer of the rights and interests represented by said contracts and deeds to the plaintiff by said Jens C. Jensen, the plaintiff became and now is a tenant in common and joint owner with the defendants herein of the said canal and irrigation system. That plaintiff has the right to flow and convey therein the waters represented by said deeds from the said Provo River through said canal and irrigation system to the said point of general delivery mentioned in said Preambles and Resolutions hereinbefore referred to, to-wit:

"To a point near the center of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian, in Utah County, Utah,"

and to the head of said Iona Lateral, and plaintiff is the

owner of sufficient capacity in said canal and irrigation system to flow and convey said waters through the same to said point of general delivery.

22. That the above entitled Court in a certain civil action heretofore determined by said Court, to-wit: Civil action 2888, appointed one T.F. Wentz, defendant herein, as water commissioner for Provo River for the purpose of controlling, regulating and distributing the waters awarded by the Decree in said cause from said Provo River into and through the diversion works, canals and laterals taking and receiving water from said Provo River. That the said Court in said cause reserves jurisdiction of the parties and subject matter in said cause for the purpose of administering the control, regulation and distribution of the waters of said Provo River, and particularly for the purpose of controlling, regulating and distributing from said Provo River any and all waters awarded by said decree in said cause. That ever since the said cause was determined by the above entitled court the defendant T.F. Wentz has at all times been, and he now is, the duly appointed, qualified and acting water commissioner of Provo River for the purpose of controlling, regulating and distributing the waters awarded by the decree in said cause from said Provo River into and through the diversion works, canals and laterals taking and receiving water from said Provo River. That the waters and water rights represented by said deeds, copies of which are attached hereto and

marked Exhibits B. D and E, were, and at all times have been, since the entry of the decree of said Court in said cause No.2888 Civil, waters which were awarded and decreed under said Decree, and which always have been, since the entry of said Decree, waters within and under the jurisdiction and control of the defendant T. F. Wentz, as said Water Commissioner.

23. That the defendants herein wrongfully assert and claim that the plaintiff, as the successor in interest of said Jens C.Jensen in and to the water rights and privileges represented by the deeds, copies of which are hereto attached and marked "Exhibits B, D and E, owns no capacity in and no right to flow or convey the said waters represented by said deeds through the main canal of the Provo Reservoir Company's Provo River irrigation system, as hereinbefore in Paragraph 16 particularly described, and said defendants wrongfully assert and claim that the plaintiff has no right to flow or convey said waters through said canal to said point of general delivery mentioned in said Preambles and Resolutions of the defendant Provo Reservoir Company for the years 1909 and 1911, to-wit:-to the center of Section 12, Township 6 South, Range 2 East of the Salt Lake Base and Meridian,- and to and into the said Iona Lateral hereinbefore referred to; and said defendants now wrongfully assert and claim that this plaintiff has no right or interest in or to the waters which flow through said main canal of said Provo Reservoir

Company's Provo River irrigation system; that said claims of said defendants, and each of them, are adverse to and against the rights of this plaintiff as the owner of the water, water rights and privileges evidenced by said deeds and the right of the plaintiff to flow the waters evidenced by said deeds through said canal and irrigation system; and said claims of said defendants and each of them, are adverse to and against the rights of this plaintiff as the joint owner with said defendants of said canal and irrigation system and are adverse to and against the plaintiff as the owner of capacity in said canal and irrigation system for flowing the waters evidenced by said deeds through said canal and irrigation system, and said claims of said defendants, and each of them, are adverse to the rights of this plaintiff as a tenant in common and joint owner of said canal and the irrigation system of said defendant Provo Reservoir Company's Provo River Irrigation system.

24. Plaintiff further alleges that he has no accurate knowledge as to the exact number of acres of primary water right which the defendant Provo Reservoir Company has heretofore disposed of under its preambles and Resolutions for the years 1909 and 1911; that plaintiff cannot definitely state what proportion of the waters heretofore and now owned by the defendant Provo Reservoir Company and the defendant Provo Reservoir Water Users Company plaintiff is entitled to receive by reason of his ownership of 20-1/3 acres of primary water right evidenced by the deeds, copies of which

are attached hereto and marked Exhibits B, D and E. Plaintiff further alleges that he is the owner of and entitled to the use of such proportion of the said waters of Provo River heretofore or now owned by the defendant Provo Reservoir Company, or the defendant Provo Reservoir Water Users Company, as said 20-1/3 acres of primary water right bears to the total number of like units of said primary water right sold or disposed of by said Provo Reservoir Company, and that said plaintiff is the owner of the right to flow and convey his proportion of said primary water right from said Provo River through the main canal of the Provo Reservoir Company's Provo River irrigation system, which said canal is particularly described in Paragraph 16 herein, to and into said Iona Lateral near the center - of Section 12, Township 6 South, Range 2 East of the Salt Lake Base and Meridian, in Utah County, Utah.

As and for a second cause of action the plaintiff complains of the defendants and allege,-

1. Plaintiff hereby adopts and reiterates Paragraphs numbered 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17, 18,19,20,21, and 22 of plaintiff's first cause of action herein, and each and every allegation contained in said Paragraphs as and for Paragraphs 1,2,3,4,5,6,7,8,9,10,11,12,13, 14,15,16,17,18,19,20,21, and 22 of plaintiff's second cause of action against the defendants herein, the same as if said paragraphs and each and every allegation contained therein were set forth in full herein.

✓ 23. Plaintiff further alleges that he is the owner of 2.52 cubic feet per second of flow of the waters of Provo River, which said waters were awarded, adjudged and decreed to John D. Dixon in the decree of the above entitled Court in that certain action determined by said Court, towit: Civil Action No.2888; that said 2.52 cubic feet per second of water at all times since the entry of said decree in said cause has been and now is, "transferred water," as defined in Sub-division A of Paragraph 33 of the said decree; that said paragraph of said decree provides,- that said 2.52 cubic feet per second of water is water that the owner thereof has the right to divert and flow over the Olmstead dam in Provo Canyon, Utah County, Utah, and that the owner thereof has the right to divert said waters from said Provo River at a point near the mouth of Provo Canyon.

24. Plaintiff further alleges that during the irrigation season of each and every year there has been and there now is, and plaintiff is informed and believes and on said information and belief plaintiff alleges, that there will continue to be an unused capacity in the said canal constructed by the defendant Provo Reservoir Company, as hereinbefore alleged, which said canal is particularly described in Paragraph 16 herein from the point of diversion thereof to a point near the center of Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian; that there has been and now is, and will continue to be, unused capacity in said canal during the irrigation season of each year;

that plaintiff as a tenant in common and joint owner of said canal is entitled to the use of said unused capacity in said canal; and that plaintiff, as a tenant in common and joint owner of said canal, is entitled to the use of any unused capacity therein at any and all times; that plaintiff, as the owners of said 2.52 cubic feet per second of water of Provo River has the right to divert the same from said river at the point of diversion of the canal described in Paragraph 16 herein.

25. That plaintiff now desires to use the unused canal capacity in the said main canal constructed by said defendant Provo Reservoir Company and particularly described in Paragraph 16 herein during such portion of each and every year when said canal shall have an unused capacity, for the purpose of diverting from Provo River into said canal and for the purpose of flowing through said canal to about the center of - Section 12, Township 6 South, Range 2 East, Salt Lake Base and Meridian - and into the said Iona Lateral the said 2.52 cubic feet per second of water hereinbefore mentioned, to be used by divers persons using or capable of using waters through and from the said Iona Lateral, Plaintiff further alleges that as ^{and} said tenant in common in and to said canal that he is not obligated to any of his co-tenants in said canal, or to the defendants herein, or either of them, for any charges of any nature whatsoever, or at all, on account of his use of any unused capacity in said canal, except for any increase in the cost of the distribution of the

waters of said canal caused by his use thereof, and plaintiff alleges that his use of any unused capacity in said canal will cause no increase in the cost of the maintenance or operation of said canal.

26. Plaintiff further alleges that the defendants, and each of them, wrongfully assert and claim that the plaintiff has no right to use the unused capacity in said main canal for the purpose of flowing through said canal the said 2.52 cubic feet per second of water hereinbefore mentioned, and defendants, and each of them, wrongfully assert and claim that the plaintiff has no right to use any unused capacity of said canal of the Provo Reservoir Company's Provo River irrigation system for flowing any water through said canal, and the defendants, and each of them wrongfully assert and claim that this plaintiff must pay to the defendant Provo Reservoir Company and the defendant Provo Reservoir Water Users Company a rental for the use of any unused capacity in said main canal of said Provo Reservoir Company's Provo River irrigation system when plaintiff shall use any unused capacity of said canal for flowing water therein.

27. That the defendant T.F. Wentz, as water commissioner of said Provo River under the appointment of the above entitled Court, as hereinbefore alleged, has the active charge, supervision, control and distribution of water from said Provo River into said main canal, and said defendant T.F. Wentz has heretofore wrongfully refused, and he does now wrongfully refuse, and said defendant threatens to continue to wrongfully refuse to divert any of the said waters

owned by this plaintiff into said main canal of said Provo Reservoir Company's Provo River Irrigation system, or to permit the said waters of the plaintiff to flow through said canal. That said waters owned by the plaintiff, which plaintiff has heretofore sought and now seeks to use and flow through said main canal were and are waters which have heretofore been awarded, adjudged and decreed to plaintiff's predecessors in interest in a judgment and decree made and entered by the above entitled Court in said Cause No.2888 civil hereinbefore mentioned, and said waters are under the jurisdiction, control and supervision of the defendant T.F. Wentz as water commissioner; that said defendant T.F.Wentz as said water commissioner is amenable and subject to the orders of this Court with respect and in relation to the distribution of said water.

28. That each and all the claims and assertions of the defendants, and each of them, are wrongful and without any right and are adverse to and against the rights of plaintiff as a joint owner of and tenant in common of said main canal hereinbefore in Paragraph 16 mentioned and described.

As and for a third cause of action against the defendants herein the plaintiff complains and alleges,-

1. Plaintiff hereby adopts and reiterates Paragraphs numbered 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17, 18,19,20,21 and 22 of plaintiff's first cause of action

herein, and each and every allegation contained in said Paragraphs as and for Paragraphs 1,2,3,4,5,6,7,8,9,10,11, 12,13,14,15,16,17,18,19,20,21 and 22, of this plaintiff's third cause of action against the defendants, the same as if each of said Paragraphs, and each and every allegation therein contained were set forth in full herein.

23. Plaintiff further alleges that the defendant Provo Reservoir Water Users Company is a corporation, formed by persons, numerous of which at the time of the formation and organization of said corporation owned and held deeds from the defendant Provo Reservoir Company for acres of water under the Preambles and Resolutions of said Provo Reservoir Company for the years 1909 and 1911.

24. The said Preambles and Resolutions herein referred to for the year 1909 provide,- that an acre of primary water right shall entitle the holder of such to irrigation water sufficient for the irrigation of one acre of land at a duty not greater than 75 acres of land to each second foot as a low water right, and as a high water right at a duty of not more than fifty acres per second foot; That the said Preambles and Resolutions for the year 1911 provide,- the same duty for water except that the duty for high water is fixed at not greater than seventy-five acres per second foot of water. The Articles of Incorporation of Provo Reservoir Water Users Company provide,- that a share of full water right stock entitles the owner to a pro rata share of the water of the company but not to exceed one-seventy-fifth ($1/75$ th.) of a second foot per acre of water

from January 1st, to June 15th, and from July 1st. to October 1st. not to exceed ^{one} one-hundredth second foot of water per acre.

25. That on the 4th. day of August, 1909 and at all times thereafter, and to and including the 29th. day of November, 1918, said Provo Reservoir Company was the owner and holder of water rights in its Provo River irrigation system sufficient to supply the 20-1/3 acres of water represented by the deeds, copies of which are attached hereto, with the ~~minimum~~ amount of water therein provided, and with water sufficient to irrigate 20-1/3 acres of land throughout the irrigation season of each and every year with a duty of not more than seventy-five acres per second foot and to irrigate ten acres during the high water season on a duty of not to exceed fifty acres per second foot. a

26. That subsequent to the execution of the contracts, copies of which are attached hereto as Exhibits A and C, the Provo Reservoir Company issued numerous other contracts of like character, the number of which is not known to plaintiff. Plaintiff alleges on information and belief that prior to the issuance to plaintiff's assignor Jens C. Jensen of the deeds, Exhibits B.D and E, Provo Reservoir Company issued approximately 240 deeds for water rights, many of which are of like character as Exhibits B, D and E attached hereto, and that many and numerous of such deeds have been assigned and set over to Provo Reservoir Water Users Company, defendant herein, for its full water right stock. a

27. That under the said contracts and deeds

herein set forth as Exhibits A, B, C, D and E attached hereto, plaintiff has a right to the use of and is the owner of sufficient of the waters of Provo Reservoir Company's Provo River irrigation system to irrigate $20\text{-}1/3$ acres of land through the irrigation season of each and every year, to wit: to the 15th. day of September on a duty not greater than seventy-five acres per second foot and ten acres thereof during high water period on a duty of not ^{more} ~~less~~ than fifty acres per second foot.

28. Plaintiff alleges on information and belief that numerous deeds for water rights to divers persons have been executed by Provo Reservoir Company subsequent to the recordation of contracts, Exhibits A and C attached hereto, and that the defendant Provo Reservoir Water Users Company has acquired numerous of the rights under said deeds in exchange for its fullwater right stock. Plaintiff further alleges that said $20\text{-}1/3$ acres of primary water right owned by plaintiff, as evidenced by said deeds, Exhibits B, D, and E have priority over any and all deeds issued by defendant Provo Reservoir Company subsequent to the recordation of the contracts, copies of which are attached hereto and marked Exhibits A and C, and that as against any and all of said defendants and persons whomsoever who hold such deeds, or deeds of similar character, or contracts of like character issued since said deeds, copies of which are attached hereto, the plaintiff has a right to irrigation waters from Provo Reservoir Company's Provo River irrigation system to the

amount specified in said deeds, to wit: sufficient to irrigate 20-1/3 acres of land on a duty of not greater than seventy-five acres per second foot throughout the irrigation season of each year and up to and until September 15th, of each and every year.

29. That the Articles of Incorporation of said Provo Reservoir Water Users Company provides, among other things, - that stock in said corporation shall be issued one full water right share thereof to any person who transfers to said corporation one acre of primary water right such as is represented by deeds, copies of which are attached hereto and marked Exhibits B, D and E.

30. That said Articles of Incorporation of the defendant Provo Reservoir Water Users Company assumes to provide and the defendant herein assert that the shares of stock issued by said Provo Reservoir Water Users Company in exchange for acres of water right identical with the rights represented by the deeds, copies of which are attached hereto, are superior to and represent a greater water right than the acres of primary water right represented by said deeds. That said defendant Provo Reservoir Water Users Company assumes to issue one share of its full water right stock for and in exchange for one acre of primary water right ^{as represented} by deeds, copies of which are attached hereto, but that the said Articles of Incorporation of Provo Reservoir Water Users Company provide a greater duty of water for full water right stock, to wit: that the quantity shall not be greater than one-

seventy-fifth second foot per acre.

31. That each and all of the defendants herein wrongfully assert and claim that the said shares of full water right stock issued by the said defendant Provo Reservoir Water Users Company are superior to and represent a greater water right than an acre of primary water right as represented by the deeds, copies of which are hereto attached. That ever since the organization of the defendant corporation Provo Reservoir Water Users Company, defendants herein have repeatedly and continuously given forth in speech and stated and asserted that a share of full water right stock issued by the said defendant Provo Reservoir Water Users Company represents a water right which is superior to and greater than the water right represented by an acre of primary water as represented by the deeds, copies of which are hereto attached, and that the water right represented by an acre of primary water right, as evidenced by said deeds, copies of which are hereto attached, is inferior to and deficient in quantity to the water right represented by a share of the full water right stock of the defendant Provo Reservoir Water Users Company. That said statements and assertions so made and given forth by the defendants are untrue and have no foundation in fact, and said statements and assertions are a slander on the plaintiff's title to the water rights represented by the deeds, copies of which are hereto attached. Plaintiff alleges on information and belief that the defendants will continue in the future, unless enjoined from so doing by the above entitled Court, to put forth and promul-

gate said wrongful and untire statements and assertions. Plaintiff further alleges that any and all of the claims and assertions of the defendants that a share of full water right stock issued by the defendant Provo Reservoir Water Users Company is superior to and represents a greater water right than an acre of primary water as represented by the defendants deeds hereto attached, are wrongful and unlawful and have no basis in fact and are adverse to and against the rights of the plaintiff herein, to an equitable distribution to him of the said waters of said irrigation system to which he is entitled as the owner of the water right represented by the deeds, copies of which are hereto attached, and are adverse to his right to receive of the waters of said Provo River a quantity of water for each acre of said primary water right held and owned by him as in said Preambles and Resolutions of Provo Reservoir Company for the years 1909 and 1911 provided, and as hereinabove stated. 13

32. That said defendant T.F. Wentz, as said water commissioner, has heretofore wrongfully and without right, refused, and does now wrongfully and without right refuse, and he does now threaten to continue to wrongfully and without right refuse to distribute to the plaintiff a quantity of water for an acre of primary water right such as is represented by the deeds, copies of which are hereto attached, equal in amount to the quantity of water actually and in fact owned by the plaintiff as the owner and holder of the 20-1/3

acres of water right represented by the said deeds, copies of which are hereto attached and marked Exhibits B, D and E.

As and for a fourth cause of action against the defendants herein the plaintiff complains and alleges,-

1. Plaintiff hereby adopts and reiterates Paragraphs numbered 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18, 19, 20, 21 and 22 of plaintiff's first cause of action herein, and each and every allegation contained in said paragraphs, as and for Paragraphs 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21 and 22 of this plaintiff's fourth cause of action against the defendants the same as if each of said paragraphs and each and every allegation therein contained were set forth in full herein.

23. That the said preambles and Resolutions of 1909 and 1911 hereinbefore referred to, each provides that a maintenance fee of \$1.50 per acre shall be paid by the owner of acres of primary water right to defendant Provo Reservoir Company for each acre of primary water right sold by the said defendant Provo Reservoir Company until the contract price of said water right shall be paid in full.

24. That the predecessor in interest of the plaintiff in and to the 20-1/3 acres of primary water right represented by the deeds copies of which are hereto attached, paid in full to the defendant Provo Reservoir Company for any and all water rights represented by the said deeds prior to the execution and delivery to him of said deeds by the said

defendant Provo Reservoir Company.

25. That said Preambles and Resolutions for the years 1909 and 1911 contain no provision whatsoever requiring plaintiff, as the owner and holder of the water rights represented by the said deeds, to make any payment or specifying the amount of any payment to be made by the plaintiff to any one on account of his ownership of said water rights for the maintenance of said main canal in paragraph 16 hereof described, or for or on account of any cost of distribution of said waters represented by said deeds except as hereinbefore stated. u

26. That said preambles and Resolutions for 1909 and 1911 provide that the water represented by the said deeds shall be conveyed by Provo Reservoir Company to a point near the center of Section 12, Township 6 South, of Range 4 East, Salt Lake Meridian, known as the point of general delivery; that said Preambles and Resolutions specifically provide that the holders of deeds such as those copies of which are attached hereto, shall provide for themselves the means of distribution of any and all water represented by such deeds from said point of general delivery hereinbefore referred to, to the place of use of said waters by the owners thereof.

27. That notwithstanding the provisions of the said preambles and Resolutions for the said years 1909 and 1911, the said defendants herein, and each of them, wrongfully and without any right whatsoever, assert and claim

that plaintiff is required to pay and, on account of his ownership of the water rights represented by the said deeds, copies of which are hereto attached, must pay charges and costs of maintenance of the Provo Reservoir Company's Provo River irrigation system for the maintenance of canals and distribution of water therein to points ^{far} ~~for~~ beyond the said point of general delivery as fixed in the said Preambles and Resolutions under which the said deeds were issued.

28. Plaintiff further alleges that he is not obliged, under any contract or otherwise, or in any manner, or at all, as the owner of the water rights represented by the deeds, copies of which are hereto attached, or as a tenant in common in the said canal herein in Paragraph 16 specifically described, to pay any amount whatsoever for the maintenance of the said Provo Reservoir Company's Provo River irrigation system; that as a tenant in common of the said main canal, in Paragraph 16 specifically described, he should pay his proportionate share of the maintenance thereof according to his use thereof to the said point of general delivery hereinabove described. *denies*

29. Plaintiff alleges on information and belief that T.F. Wentz, as Commissioner, is charged with the duty of pro rating to users having independent rights in the said main canal, specifically described in Paragraph 16, the amount of expense of maintenance of said main canal which each user and owner of water rights flowed therein should pay toward the maintenance thereof on account of such use. *denies*

WHEREFORE, Plaintiff prays judgment against said defendants, and each of them, as follows, towit:

ON PLAINTIFF'S FIRST CAUSE OF ACTION:

1. That the Court determine the right of plaintiff to flow the said 20-1/3 acres of primary water right represented by the deeds, copies of which are hereto attached, through the said main canal of the Provo Reservoir Company's Provo River irrigation system which canal is described in Paragraph 16 of plaintiff's first cause of action herein.

2. That the Court enter herein a decree quieting plaintiff's title as against each and all of the defendants herein to a right-of-way and capacity in the said main canal in Paragraph 16 described for the conveyance of the said 20-1/3 acres of primary water right through the said canal to the said point known as the point of general delivery to-wit: to a point near the center of Section 12, Township 6 South, Range 2 East, Salt Lake Meridian.

3. That It be adjudged by the Court that plaintiff, as the owner and holder of the said 20-1/3 acres of primary water right represented by the said deeds, copies of which are hereto attached, is entitled to such proportionate share of the waters flowing in the said main canal herein in Paragraph 16 described, to supply water rights of persons holding rights of the same character in priority as represented by plaintiff's deeds as the said 20-1/3 primary acres of water right shall bear to the total number of such units in said canal.

4. That plaintiff's title to such proportionate

share of the said waters now, or hereafter flowing in said main canal, be quieted as against each and all of the defendants herein.

5. That the said T.F. Wentz, as commissioner, be, by the judgment herein rendered, required to divert from Provo River into the said main canal, herein in Paragraph 16 described, the water represented by the said 20-1/3 acres of primary right owned by the plaintiff and represented by the deeds hereto attached, and that he be further required to distribute said 20-1/3 acres of primary water right into such laterals heading in said main canal as plaintiff, his lessees or assigns, may require from time to time.

ON PLAINTIFF'S SECOND CAUSE OF ACTION:

6. That the Court determine the right of plaintiff, at his election to flow through the said main canal, herein in Paragraph 16 specifically described, the said 2.52 second feet of water owned by the plaintiff, as herein in his second cause of action stated, together with any other waters which plaintiff may have which may be flowed through said main canal for beneficial purposes at any and all times when there shall be an unused capacity in said canal, and particularly from such time as the recession of annual high water shall leave sufficient space in said canal for such waters, or a portion thereof, to the end of the irrigation season of each and every year.

7. That plaintiff's rights to so flow water in said canal be quieted as against each and all of the claims

of the defendants herein.

8. That the said T. F. Wentz, as commissioner under appointment of the Court, and his successors in office, be, by the judgment, directed at plaintiff's request, or the request of plaintiff's lessees or assigns, to divert any such waters which plaintiff may have a right to so flow through the said main canal, herein in Paragraph 16 specifically described, into the said canal for plaintiff's use, or for the use of plaintiff's lessees or assigns, and that said T. F. Wentz, as such commissioner, be directed by the judgment, to divert such waters from the said canal into such laterals heading in said canal as shall be designated by plaintiff herein, or by plaintiff's lessees or assigns entitled to the use of such water.

9. That the Court determine the liability of the plaintiff herein for so flowing such waters in the said main canal, specifically described in Paragraph 16 herein, and it be ordered and adjudged that plaintiff shall not be required to pay any rentals to any of the defendants herein for carrying capacity in said main canal for his said water when there shall be an otherwise unoccupied space therein, and that it be decreed that plaintiff shall pay only such additional cost of maintenance of said main canal, if any, which are occasioned by such conveyance of plaintiff's water therein.

ON PLAINTIFF'S THIRD CAUSE OF ACTION:

10. That defendants and each of them, be by the Court restrained from giving out in speech that an acre of

primary water right as evidenced by the deeds, copies of which are attached to plaintiff's complaint, is inferior to and a less water right than a share of full water right stock of Provo Reservoir Water Users Company as by it issued.

11. That it be decreed by the Court that plaintiff's rights to the irrigation waters of said main canal, as represented by his deeds, copies of which are hereto attached, are superior to and prior in right to any and all rights of defendants and each of them, by them held or claimed through conveyances or deeds from the said Provo Reservoir Company issued subsequent to the issuance of the deeds, copies of which are hereto attached.

12. That plaintiff's title be quieted as against defendants, and each of them, and against any and all rights and claims of defendants through deeds issued by the Provo Reservoir Company subsequent to the issuance of the deeds attached hereto to sufficient waters in and of the said main canal, described in paragraph 16 hereof, for the irrigation of 20-1/3 acres of land at a duty not greater than seventy-five acres per second foot and that under Exhibit "B" plaintiff is entitled to irrigate ten acres of lands throughout the high water season on a duty of not greater than fifty acres per second foot.

13. That the said T.F. Wentz, as Commissioner, and his successor in office, be required to divert from Provo River into said main canal, herein in Paragraph 16 described, and to distribute to plaintiff, or his successor in interest, from the waters of said main canal a volume sufficient for the

irrigation of 20-1/3 acres of land on a duty not greater than that hereinbefore prayed to be decreed by the Court so long as there shall be sufficient waters in said main canal to supply all of the owners and holders of deeds issued by the Provo Reservoir Company in point of time down to and including the issuance of the deeds attached, said water to be distributed from said main canal into such laterals heading therein as plaintiff or his assigns, or lessees may direct.

ON PLAINTIFF' FOURTH CAUSE OF ACTION:-

14. That the Court determine the liability of plaintiff herein for cost of maintenance of said main canal in Paragraph 16 herein described, on account of plaintiff's ownership of said 20-1/3 acres of primary water right as represented by the deeds hereto attached, and his use of said canal for the conveyance of said water therein.

15. That it be ordered and adjudged by the Court that plaintiff shall pay only such proportionate share of the costs of maintenance of the said main canal to the center of said - Section 12, Township 6 South of Range 2 East, Salt Lake Meridian,- towit: to the point of general delivery as fixed in the said Preambles and Resolutions of Provo Reservoir Company for the years 1909 and 1911, as the volume of his right therein by reason of his ownership of said 20-1/3 acres of primary right shall bear to the whole volume of said canal.

16. That it be decreed by the Court that plaintiff as the owner of the said 20-1/3 acres of primary water

right in the said main canal is not obligated to pay to any of his co-tenants, or defendants herein, any charge for maintenance or distribution other than his proportionate share of the reasonable cost of maintenance of the said main canal to the point of general delivery to-wit: to a point near the center of - Section 12, Township 6 South of Range 2 East, Salt Lake Meridian.

17. That said T. F. Wentz, as Commissioner, be required by the Court to pro rate the cost of maintenance of said main canal to the center of Section 12, Township 6 South of Range 2 East, Salt Lake Meridian, to-wit: to the point of general delivery herein mentioned and to pro rate to plaintiff such share of the cost of maintenance thereof as herein determined by the Court.

18. Plaintiff further prays for general relief, and for his costs herein expended.

Two handwritten signatures in cursive script, one above the other, each followed by a horizontal line.

Attorneys for Plaintiff.

STATE OF UTAH)

COUNTY OF UTAH) SS

Caleb Tanner, being first duly sworn, deposes and says; that he is the plaintiff named in the above and foregoing action; that he has read the above and foregoing complaint and knows the contents thereof and that the same are true of his own knowledge, except as to matters and things therein stated on information and belief, and as to such matters he believes it to be true.

Caleb Tanner

Subscribed and sworn to before me

this 26th day of March 1926.

[Signature]

Notary public.

Residing Provo, Utah.

My commission expires Mar 5 1927.

EXHIBIT A
WATER CONTRACT NO.9

This Agreement made this 4th. day of August, 1909 by and between Provo Reservoir Company, a corporation of the State of Utah, principal place of business, Provo, Utah, (hereinafter called the company), party of the first part and Jens C. Jensen, and his wife, of Provo Bench, Utah County, State of Utah, (hereinafter called the Consumer), party of the second part, WITNESSETH:

In consideration of the sum of One Dollar paid by the said Consumer to the Company, the receipt of which is hereby acknowledged by the latter, and the further sum of Seven Hundred Fifty Dollars, to be paid by the Consumer to the Company, at the times and in the manner specified in the resolution hereinafter referred to, and the further consideration of the covenants and agreements of this contract, the parties hereto mutually agree, promise and covenant with each other as follows, to-wit:--

The Company agrees to furnish to the Consumer and the Consumer agrees to purchase and take from the Company Ten acres of Primary water and no Acres of High Water, as described in the resolution hereinafter referred to, for the irrigation of the following described tract of land in Utah County, State of Utah, to-wit:--

The Half of the South half of the North East Quarter of the South West quarter of Section 22, Township 6 South, Range 2 East of the Salt Lake Meridian, Area 10 acres.

And the parties hereto promise, and agree to and with each other, that they and their heirs, representatives, successors and assigns will faithfully observe and be bound by all and singular the terms, conditions and covenants hereof, and of that certain resolution of the Board of Directors of the Company, representing the sale of water rights and security payment therefor, and all matters therein stated and connected with the construction, operation and management of canal systems, reservoirs, and other matters, of whatever nature therein set forth, passed on July 28th, 1909, and recorded August 4th, 1909, in Book "114" at Page 23 of the Utah County Records of said Utah County, Utah; which resolution and the said record thereof are hereby referred to, and in all respects made a part of this contract, and accepted by, and is binding upon, the parties hereto.

And this contract shall be construed to be and is a Mortgage Lien upon the above described tract of land, and the said land is and shall be and remain charged with all the conditions of this contract, including all, the conditions, terms, and stipulation set forth in the resolution hereinafter referred to.

IN WITNESS WHEREOF, the said corporation has caused this contract and mortgage be signed by its president and its corporate seal to be hereunto affixed, and the said Consumers and Mortgagors have hereunto set their hands this 4th day of August 1909.

PROVO RESERVOIR COMPANY, a
Corporation,

Attest:

Earl J. Glade,
Secretary

By Joseph R. Murdock, its President

Jens C. Jensen
Maren Jensen

(Corporate Seal)

"EXHIBIT B."

DEED FOR WATER RIGHT

PROVO RESERVOIR COMPANY, a corporation of the State of Utah, having its principal office at Provo City, Utah County, State of Utah, grantor, hereby conveys and warrants to Jens C. Jensen of Provo Bench, Utah County, State of Utah, for the sum of One Dollar and other valuable considerations, the receipt of which is hereby acknowledged, Ten (10) Acres of Primary Water Right in the grantor's Provo River Irrigation System, as defined in that certain Preamble and Resolutions adopted by the grantor corporation on July 28, 1909 a copy of which Preamble and Resolutions is recorded in the office of the County Recorder of Utah County, State of Utah, in Book 114 of Mortgages, at Page 23, which record with the Preamble and resolutions is hereby referred to and made a part hereof.

Subject to the water rights heretofore conveyed to the Blue Cliffs Canal Company corporation, by deed dated February 16, 1910, and recorded in said recorder's office in Book 115 of Deeds, at page 347, reference to all of which is made as a part hereof.

IN WITNESS WHEREOF, said corporation has caused this deed to be signed by its President and its Secretary, and its corporate seal to be hereunto affixed at its office at Provo City, Utah, this 29th. day of November, A.D. 1918.

PROVO RESERVOIR COMPANY,
a corporation

By Joseph R. Murdock (Signed)
Its President

Attest: R.J. Murdock (Signed)
Secretary

STATE OF UTAH:)
County of Utah:) SS.

On the 29th. day of November, 1918, personally appeared before me, Joseph R. Murdock, who being by me first duly sworn, on his oath says, that he is the President of the Provo Reservoir Company, a Utah Corporation, and the foregoing instrument was signed by him on behalf of said corporation by authority of resolutions of its Board of Directors, and the said Joseph R. Murdock duly acknowledged to me that said corporation executed the same.

Alfred L. Booth,
Notary Public

My commission expires April 15, 1919.

WATER CONTRACT NO.156

THIS AGREEMENT, Made this 22nd day of September, 1911, by and between Provo Reservoir Company, a corporation of the State of Utah, principal place of business, Provo, Utah, (hereinafter called the Company), party of the first part, and Jens C. Jensen, and his wife Maren Jensen, of Provo Bench, Utah County, State of Utah, (hereinafter called the Consumer) party of the second part, Witnesseth:

In consideration of the sum of One Dollar paid by the said consumer to the Company the receipt of which is hereby acknowledged by the latter, and the further sum of Four Hundred Dollars, to be paid by the Consumer to the Company, at the times and in the manner specified in the resolution hereinafter referred to and the further consideration of the covenants and agreements of this contract, the parties hereto mutually agree, promise and covenant with each other as follows, to-wit:-

The Company agrees to furnish to the Consumer and the Consumer agrees to purchase and take from the Company Five (5) acres of primary water and No Acres of high water, as described in the resolution hereinafter referred to, for the irrigation of the following described tract of land situated in Utah County, State of Utah, to-wit:

South Quarter of the North half of the North East quarter of the South West Quarter of Section 22, Township 6 South of Range 2 East of the Salt Lake Meridian, Area 5 Acres.

And the parties hereto promise and agree to and with each other, that they and their heirs, representatives, successors and assigns will faithfully observe and be bound by all and singular the terms, conditions and covenants hereof and of that certain resolution of the Board of Directors of the Company, respecting the sale of water rights and security of payment therefor, and all matters therein stated and connected with the construction, operation and management of canal systems, reservoirs, and other matters, of whatever nature therein set forth, passed on Feby 15th. 1911, and recorded March 25th. 1911, in Book "126" at page 358 of Utah County records of said Utah County, Utah, which resolution and the said record thereof are hereby referred to, and in all respects made a part of this contract, and accepted by and is binding upon the parties hereto.

And this contract shall be construed to be and is a mortgage lien upon the above described tract of land, and the said land is and shall be and remain charged with all the conditions of this contract, including all the conditions, terms and stipulations set forth in the resolution hereinbefore referred to.

IN WITNESS WHEREOF, the said corporation has caused this contract and mortgage to be signed by its president, and its corporate seal to be hereunto affixed, and the said consumer and mortgagors have hereunto set their hands this 22d day of September, 1911.

PROVO RESERVOIR COMPANY,
a corporation

By Joseph R. Murdock, its
President

Jens C. Jensen
Maren Jensen

Attest:

R. J. Murdock
SECRETARY

(CORP. SEAL)

"EXHIBIT D"

DEED FOR WATER RIGHT

PROVO RESERVOIR COMPANY, a corporation of the State of Utah, having its principal office at Provo City, Utah County, State of Utah, grantor, hereby conveys and warrants to Jens C. Jensen of Provo Bench, Utah County, State of Utah, for the sum of One Dollar and other valuable considerations, the receipt of which is hereby acknowledged, Five (5) Acres of Primary Water Right in the grantor's Provo River Irrigation System, as defined in that certain Preamble and Resolutions adopted by the grantor corporation on February 15, 1911 a copy of which Preamble and Resolutions is recorded in the office of the County Recorder of Utah County, State of Utah, in Book 126 of Mortgages, at page 358, which record with the Preamble and Resolutions is hereby referred to and made a part hereof.

Subject to the water rights heretofore conveyed to the Blue Cliffs Canal Company corporation, by deed dated February 15, 1910, and recorded in said recorder's office in Book 115 of Deeds, at page 347, reference to all of which is made a part hereof.

IN WITNESS WHEREOF, said corporation has caused this deed to be signed by its President and its Secretary, and its corporate seal to be hereunto affixed at its office at Provo City, Utah, this 29th. day of November, A. D. 1918.

PROVO RESERVOIR COMPANY
a corporation,

By Joseph R. Murdock (Signed)
Its President

Attest R. J. Murdock
Secretary

State of Utah:)
County of Utah:) SS

On the 29th day of November, 1918, personally appeared before me, Joseph R. Murdock, who being by me first duly sworn, on his oath says, that he is the President of the Provo Reservoir Company, a Utah corporation by authority of resolutions of its Board of Directors, and the said Joseph R. Murdock duly acknowledged to me that said corporation executed the same.

Alfred L. Booth
Notary Public

My commission expires
April 15, 1919

"EXHIBIT E"

DEED FOR WATER RIGHT

PROVO RESERVOIR COMPANY, a corporation of the State of Utah, having its principal office at Provo City, Utah County, State of Utah, grantor hereby conveys and warrants to Jens C. Jensen, Provo Bench, grantee, of Utah County, State of Utah, for the sum of One Dollar, and other valuable consideration hereby acknowledged, five and one-third (5 1-3) Acres of Primary Water Right in the grantor's Irrigation System, as defined in ~~that~~ certain Preamble and Resolutions adopted by the grantor corporation, on February 15, 1911, a copy of which Preamble and Resolutions is recorded in the office of the County Recorder of Utah County, State of Utah, in book 126, at page 358, which record is hereby referred to and made a part hereof.

This deed is intended to convey, and there is hereby conveyed to the said grantee, such undivided interest in common, in and to the whole of the water rights, easements and rights of way and franchises for canals and diversion works, as are now owned by, and that may hereafter be acquired by, the company for use in connection with the said grantor company's Provo river system, as the interest of the said grantee, represented by the number of Acres of water right hereby conveyed, shall at this or at any time hereafter bear pro-rata to the total number of Acres of water right sold or contracted for sale by said grantor company.

This deed is however subject to those certain interests and rights in said Provo River Irrigation system which the grantor has heretofore conveyed to the Blue Cliffs Canal Company, a corporation.

Grantee accepts obligation for maintenance as set forth in said Preamble and Resolutions; and also waives all participation of control, management, operation and regulation of the said system, until Jan. 1, 1920.

IN WITNESS WHEREOF, said corporation has caused this deed to be signed by its President and its Secretary, and its corporate seal to be hereunto affixed at its office at Provo City, Utah, 28th. day of December, A.D. 1912.

PROVO RESERVOIR COMPANY,
A corporation

By Joseph R. Murdock,
its President (Signed)

Attest: Royal J. Murdock, Secretary
(Signed)

STATE OF UTAH)
COUNTY OF UTAH) SS.

On 28th day of December, 1912, personally appeared before me Joseph R. Murdock and Royal J. Murdock, who being first duly sworn, each on his oath says that they are respectively the President and **Secretary** of Provo Reservoir Company, a Utah corporation, and the foregoing instrument was signed by them on behalf of said corporation by authority of resolutions of its Board of Directors, and the said Joseph R. Murdock and Royal J. Murdock duly acknowledged to me that said corporation executed the same.

Alfred L. Booth
Notary Public

My commission Expires
April 25th, 1915

6346

IN DIST COURT
UTAH CO. DIST CT
FILED
MAR 26 1928
6
J. M. Hall
Melba Bachman
Clerk
Deputy

WITNESSES
MA commission Exhibits

Notary Public
Alfred L. Booth

we that said corporation executed the same.
Joseph H. Madsen and Volney J. Madsen duly acknowledged to
all of negotiations of the Board of Directors, and the said
was signed by them on behalf of said corporation by appro-
priate and proper corporation, and the foregoing instrument
lawfully the President and Secretary of the said corporation
before that said solemn, each on his own oath that they are
before me Joseph H. Madsen and Volney J. Madsen, who
on 28th day of December, 1927, personally ap-

COMMISSIONER OF ALBANY)
SEAL OF ALBANY) 22.
SEAL OF ALBANY)

In the District Court of Utah County
State of Utah

Caleb Tanner

Plaintiff

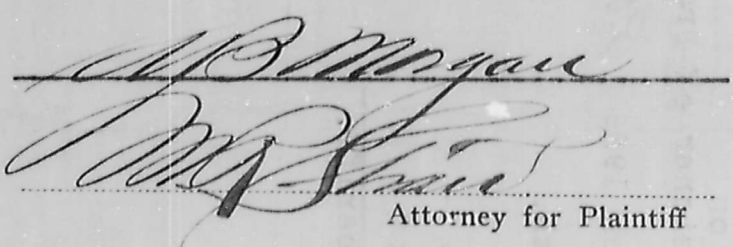
vs.

SUMMONS

Provo Reservoir Company, a corporation
~~Provo Reservoir Water Users Company,~~
a corporation, Blue Cliff Canal Company,
a corporation, North Union Irrigation
Company, a corporation, ~~Defendants~~
Provo Bench Canal & Irrigation Company,
a corporation, and T.F. Wentz as Commissioner
of Provo River, Defendants

THE STATE OF UTAH TO SAID DEFENDANT:

You are hereby summoned to appear within twenty days after service of this summons upon you, if served within the county in which this action is brought, otherwise within thirty days after such service, and defend the above entitled action; and in case of your failure so to do, judgment will be rendered against you according to the demands of the complaint ~~which has been filed with the Clerk of the Court~~ which within ten days will be filed with the Clerk of said Court.


Attorney for Plaintiff

P. O. Address:

Provo, Utah

No 4575

Served this Summons on
T.F.Wentz as Commissioner of Provo River

this 10 day of March 1926

At Provo City, Utah.

J.D.Boyd Sheriff

By Ella A. Gee
Deputy Sheriff.

No. 4575

Served this Summons on
Provo Reservoir Company a Corporation

By J. L. Murdoch
Defendants

This 17 day of March 1926

At Provo City, Utah. J.D.Boyd Sheriff

On Provo Reservoir Water Users Company a corporation

By J. L. Murdoch
This 17 day of March 1926

At Provo

Blue Cliff Canal Company a Corporation

By J. L. Murdoch
At Provo

this 17 day of March 1926

At Provo

North Union Irrigation Company a Corporation

By David R. Thomas
This 17 day of March 1926

At Provo

RECEIVED AT
SHERIFF'S OFFICE,

MAR 19 1926

AT 12 O'CLOCK
J. D. BOYD, Sheriff,
Utah County, Utah.

Provo Bench Canal & Irrigation Company a corporation

By John A. Stratton

This 20 day of March 1926

At Provo Bench

Utah County Sheriff of Utah County.
By J. L. Murdoch
Deputy Sheriff.

SHERIFF'S OFFICE.

STATE OF UTAH,
COUNTY OF UTAH, } ss.

I hereby certify and return that I received the within
and hereto annex Summons on the 19th. day of March 1926
and served same upon Provo Reservoir Company a corporation,
Provo Reservoir Water Users Company, a corporation, and the
Blue Cliff Canal Company a Corporation,

the within named Defendants, personally, by delivering to and
leaving with ~~xxxxxx~~ R. J. Murdock Secretary of said
corporations, in Provo City,
Utah County, State of Utah, a true copy of said Summons on the
19th. day of March 1926

Further certify that on the copy of the Summons so served,
I endorsed the date and place of service and added my name and
official title thereto.

Dated at Provo City, Utah, this 20th. day of
March 1926.

J. D. BOYD,

Sheriff of Utah County, State of Utah,

By

Ralph J. Nielsen
Deputy Sheriff.

Sheriff's Fees:

Service	\$ 3.00
Mileage	\$ 20
Total	\$ 3.20

SHERIFF'S OFFICE.

STATE OF UTAH, }
COUNTY OF UTAH, } ss.

I hereby certify and return that I received the within
and hereto annex Summons on the **19th.** day of **March 1926**
and served same upon **North Union Irrigation Company a corpotation**

the within named Defendant , personally, by delivering to and
leaving with ~~xxxxx Defendant xxxxx~~ **David B. Thorne Secretary of**
said corporation, in Lindon,
Utah County, State of Utah, a true copy of said Summons on the
19th. day of March 1926

Further certify that on the copy of the Summons so served,
I endorsed the date and place of service and added my name and
official title thereto.

Dated at Provo City, Utah, this **20th.** day of
March 1926

J. D. BOYD,

Sheriff of Utah County, State of Utah,

By

Ralph J. Nielsen
Deputy Sheriff.

Sheriff's Fees:

Service \$ **1.00**

Mileage \$ **1.80**

Total \$ **2.80**

SHERIFF'S OFFICE.

STATE OF UTAH, }
COUNTY OF UTAH, } ss.

I hereby certify and return that I received the within
and hereto annex Summons on the 19th. day of March 1926
and served same upon Provo Bench Canal & Irrigation Company
a corporation

the within named Defendant , personally, by delivering to and
leaving with ~~said Defendant~~ John Stratton President of
said corporation. in Provo Bench.
Utah County, State of Utah, a true copy of said Summons on the
20th. day of March 1926.

Further certify that on the copy of the Summons so served,
I endorsed the date and place of service and added my name and
official title thereto.

Dated at Provo City, Utah, this 20th. day of
March 1926

J. D. BOYD,

Sheriff of Utah County, State of Utah,

By Ralph J. Nielsen
Deputy Sheriff.

Sheriff's Fees:

Service	\$ 1.00
Mileage	\$ 60
Total	\$ 1.60

SHERIFF'S OFFICE.

STATE OF UTAH, }
COUNTY OF UTAH, } ss.

I hereby certify and return that I received the within
and hereto annex Summons on the 19th. day of March 1926
and served same upon Frank Wentz as Commissioner of Provo River.

the within named Defendant , personally, by delivering to and
leaving with said Defendant in Provo City,
Utah County, State of Utah, a true copy of said Summons 20th.
March 1926.

Further certify that on the copy of the Summons so served,
I endorsed the date and place of service and added my name and
official title thereto.

Dated at Provo City, Utah, this 20th. day of
March 1926.

J. D. BOYD,

Sheriff of Utah County, State of Utah,

By Elias A. Gee
Deputy Sheriff.

Sheriff's Fees:

Service	\$ 1.00
Mileage	\$ 20.
Total	\$ 1.20

6346

IN DIST. COURT
UTAH CO. UTAH.
* FILED *

MAR 26 1928

Melba Bachman

SHERIFF'S OFFICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND
FOR UTAH COUNTY, STATE OF UTAH.

- - - - -

Caleb Tanner,

Plaintiff,

vs.

Provo Reservoir Company, a corporation,
Provo Reservoir Water Users Company,
a corporation, Blue Cliff Canal Company,
a corporation, North Union Irrigation
Company, a corporation, Provo Bench Canal and Irrigation
Company, a corporation, and T. F. Wentz,
as Commissioner of Provo River,

Defendants.

- - - - -

DEMURRER OF NORTH UNION
IRRIGATION COMPANY, a
corporation, and PROVO
BENCH CANAL AND IRRIGA-
TION COMPANY, a corporation.

Come now the defendants North Union Irrigation Com-
pany, a corporation, and Provo Bench Canal ~~Company~~ and Irriga-
tion Company, a corporation, and demur to the complaint of
the plaintiff filed herein upon the ground that said complaint
does not state facts sufficient to constitute a cause of action
against said defendants and in favor of said plaintiff.

2nd. These defendants demur to the first cause of
action contained in said complaint upon the ground that said
first cause of action does not state facts sufficient to
constitute a cause of action against these defendants and
in favor of said plaintiff.

3rd. These defendants demur to the second cause of
action contained in said complaint upon the ground that said
second cause of action does not state facts sufficient to
constitute a cause of action against these defendants and
in favor of said plaintiff.

4th. These defendants demur to the third cause
of action contained in said complaint upon the ground that

said third cause of action does not state facts sufficient to constitute a cause of action against these defendants and in favor of said plaintiff.

5th. These defendants demur to the fourth cause of action contained in said complaint upon the ground that said fourth cause of action does not state facts sufficient to constitute a cause of action against these defendants and in favor of said plaintiff.

Ray & Rawlins

Attorneys for the defendants
North Union Irrigation Com-
pany and Prove Bench Canal
and Irrigation Company.

Received copy of the above demurrer this 6th day of April,
1926.

M. R. Strawn and
A. B. Morgan

Attorneys for Plaintiff.

#6347

IN DIST. COURT
UTAH CO. UTAH.

* FILED *

APR 7 1926
Orin H. Hall Clerk

Deputy

Attorneys for Plaintiff

1889.

Received copy of the above mentioned writ of writ.

and the defendant company.
Baker and the above named
Robert Hinton Hinton com-
plaintiffs for the defendant

Boyd & Bonanza

In favor of said plaintiff.
to constitute a cause of action against these defendants and
said fourth cause of action does not state facts sufficient
of action contained in said complaint upon the showing that
the above named defendants claim to be fourth cause
in favor of said plaintiff.
constitute a cause of action against these defendants and
said fifth cause of action does not state facts sufficient to

7130

29-100

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH.

Caleb Tanner, Plaintiff,
VS.

Provo Reservoir Company, a corporation,
Provo Reservoir Water Users Company,
a Corporation, Blue Cliff Canal Company,
a corporation, North Union Irrigation
Company, a Corporation, Provo Bench Canal
and Irrigation Company, a corporation,
and T.F. Wentz, as Commissioner of Provo
River,


NOTICE.

Defendants.

To North Union Irrigation Company, a corporation, and
To Provo Bench Canal and Irrigation Company, a corporation,
and
To Ray and Rawlins, Attorneys for said Corporations;

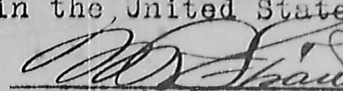
Take Notice that on the 23rd day of April, 1926, the
above entitled Court made and entered an order in the above
entitled action overruling the demurrer of North Union
Irrigation Company, a corporation, and overruling the demurrer
of Provo Bench Canal and Irrigation Company, a corporation,
to plaintiff's complaint and said defendant corporations
were granted 20 days in which to file an answer or answers
herein.

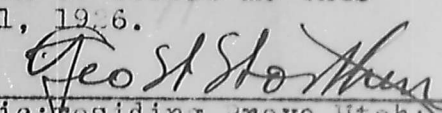
Dated Provo, Utah, this 23rd day of April, 1926.


Attorneys for Plaintiff.

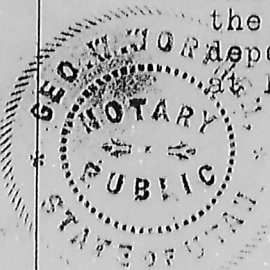
STATE OF UTAH)
COUNTY OF UTAH) SS

M.R. STRAW being first duly sworn, deposes and says; that he
is one of the attorneys for plaintiff in the above entitled
action and has his office at Provo, Utah; that Ray and Rawlins
are attorneys for defendants in above entitled action, the
North Union Irrigation Company and Provo Bench Canal and
Irrigation Company, and said attorneys have their office at
Salt Lake City, Utah; that there is a regular communication
by mail between said points daily; that on the 23rd day of
April, 1926, he placed a full, true and correct copy of the
above and foregoing notice in an envelope addressed to Ray
and Rawlins, Attorneys at Law, Salt Lake City, Utah, prepaid
the postage thereon to Salt Lake City Utah in full, and
deposited the same on said day in the United States Post Office
at Provo, Utah.


Subscribed and sworn to before me this
23rd day of April, 1926.


Notary public; residing Provo, Utah;

My commission expires December 29 1928.



6346.

IN DIST. COURT
UTAH CO., UTAH.
FILED

APR 24 1926

Th. M. Hales Clerk
Melba Bachman Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR
UTAH COUNTY, STATE OF UTAH

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:
CALEB TANNER,
:
:
Plaintiff,
:
:
-vs-
:
:
:
Provo Reservoir Company, a
:
corporation, Provo Reservoir
:
Water Users Company, a corpo-
:
ration, Blue Cliffs Canal Com-
:
pany, a corporation, North
:
Union Irrigation Company, a
:
corporation, Provo Bench Canal
:
& Irrigation Company, a corpo-
:
ration, T. F. Wentz as Commis-
:
sioner of Provo River
:
:
-----oOo-----

DEMURRER TO COMPLAINT

The said defendant, the Blue Cliffs Canal Company, now comes, and appearing for itself alone and not for either of its co-defendants, demurs to the complaint of the plaintiff on file herein, and to each and every alleged cause of action of said Complaint separately, and for grounds of demurrer states:-

I. That there is a misjoinder of parties defendant in the plaintiff's alleged first cause of action for the reason that there is no showing in the said First alleged cause of action of any community of interest or joinder of interest of this defendant, the Blue Cliffs Canal Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said first alleged cause of action of said complaint.

II. That there is a misjoinder of parties defendant in the plaintiff's alleged second cause of action for the reason that there is no showing in the said second alleged cause of action of any community of interest or joinder of interest of this defendant, the Blue Cliffs Canal Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in

any of the matters alleged or set forth in the said second alleged cause of action of said complaint.

III. That there is a misjoinder of parties defendant in the plaintiff's alleged third cause of action for the reason that there is no showing in the said third alleged cause of action of any community of interest or joinder of interest of this defendant, the Blue Cliffs Canal Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in any of the matters alleged or set forth in the third alleged cause of action of said complaint.

IV. That there is a misjoinder of parties defendant in the plaintiff's alleged fourth cause of action for the reason that there is no showing in the said fourth alleged cause of action of any community of interest or joinder of interest of this defendant, the Blue Cliffs Canal Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said fourth alleged cause of action of said complaint.

V. That there is a misjoinder of alleged causes of action in the said Complaint in this:

A.

(1) That the first alleged cause of action is an attempt to determine the right of the plaintiff to flow certain water rights represented by deeds given by one of the defendants, the Provo Reservoir Company, ^{through the main canal of} ~~/for certain water rights in~~ the Provo Reservoir Company's irrigation system.

(2) There is an attempt to obtain a decree quieting plaintiff's title against the defendant for right of way and capacity in the main canal of the Provo Reservoir Company's irrigation system, for the conveyance of $20\frac{1}{3}$ acres of Primary water through said canal.

(3) That there is an attempt to obtain a judgment of the Court, decreeing that the plaintiff is entitled to such proportionate share of the water flowing in the main canal of the Provo Reservoir Company's irrigation system, as the plaintiff's alleged $20\frac{1}{3}$ acres of Primary water right shall bear to the total number of like units in said canal.

(4) There is an attempt to quiet plaintiff's title to such proportionate share of said water as against each and all of the defendants in said cause.

(5) There is an attempt to require the defendant, T. F. Wentz, as Commissioner, to divert from the Provo River into the main canal of the Provo Reservoir Company's irrigation system, $20\frac{1}{3}$ acres of Primary water claimed to be owned by the plaintiff as set forth in said first alleged cause of action.

B.

(1) In the plaintiff's alleged second cause of action there is an attempt to determine the right of the plaintiff to flow 2.52 second feet of water claimed by the plaintiff, together with any other water which plaintiff may have which may be flowed through said main canal, and at all times when there shall be an unused capacity in said canal; said 2.52 second feet of water is not water that has ever belonged to the Provo Reservoir Company's irrigation system, but is water that the plaintiff has acquired from a source entirely independent from the water rights of the Provo Reservoir Company's irrigation system.

(2) There is an attempt to quiet plaintiff's title to the right to flow in said canal the said 2.52 second feet of water claimed by the plaintiff.

(3) There is an attempt to require and direct the defendant, T. F. Wentz, to turn said 2.52 second feet of water out of the Provo River system into the main canal of the Provo Reservoir Company's irrigation system, and to direct said T. F. Wentz, as Commissioner to divert such water from said canal into such laterals heading into such canal as shall be designated by the plaintiff or by the plaintiff's lessees or assigns claiming to be entitled to said 2.52 second feet of water.

(4) There is an attempt to have the Court determine the liability of the plaintiff herein for flowing such water in said canal, and that it be adjudged that the plaintiff shall not be required to pay any rentals to any of the defendants herein for carrying capacity in said main canal, when there shall be any other unoccupied space therein. In other words, it is an attempt to take property belonging to some of the plaintiffs without just compensation.

C.

(1) The plaintiff's third cause of action is an attempt to restrain the defendants from giving out in speech that an acre of Primary water right as evidenced by the deeds, copies of which are attached to the plaintiff's complaint, is inferior to and less than a share of full water right stock of the Provo Reservoir Water Users Company as by it issued.

(2) In his third cause of action plaintiff attempts to obtain a decree that the plaintiff's rights for the irrigation water for the main canal for the Provo Reservoir Company's irrigation system as represented by his deeds are superior and prior in right to any and all rights of the defendants and each of them by them held or claimed through conveyances or deeds from the said Provo Reservoir Company issued subsequent to the issue of the said deeds of the plaintiff.

(3) There is an attempt to quiet plaintiff's title as against the defendants and against any and all rights and claims of the defendants through deeds issued by the Provo Reservoir Company subsequent to the issuance of the deeds of the plaintiff set out in said complaint for the irrigation of said 20-1/3 acres of land at a duty not greater than 75 acres per second foot, and that under Exhibit B plaintiff is entitled to irrigate 10 acres of land throughout the High water season on a duty of not greater than 50 acres per second foot.

(4) There is an attempt to obtain a decree requiring T. F. Wentz to divert from Provo River into the said main canal and distri-

bute to the plaintiff or his successors in interest from the waters of said main canal a volume sufficient for the irrigation of 20-1/3 acres of land or a duty not greater than that before prayed for in said complaint, so long as there shall be sufficient water in said main canal to supply all of the owners and holders of deeds issued by the Provo Reservoir Company from point of line down to and including the issuance of deeds attached to said complaint, such water to be distributed into such laterals as the plaintiff or his assigns or lessees may direct.

D.

(1) There is an attempt in plaintiff's alleged fourth cause of action to obtain a decree of the Court to determine the liability of the plaintiff for the cost of maintenance of said canal in paragraph 16~~2~~ of said complaint described on account of the plaintiff's ownership of the 20-1/3 acres of Primary water right represented by said deeds, and his use of said canal for the conveyance of said waters therein.

(2) There is an attempt to obtain an order and judgment of the Court that plaintiff pay only such proportionate share of the costs of maintenance of said main canal to the alleged point of general delivery as mentioned in said complaint as the volume of his right therein, by reason of his alleged ownership of said 20-1/3 acres of Primary water right shall bear to the whole volume of said canal.

(3) There is an attempt to obtain a decree by the Court that the plaintiff as the owner of said 20-1/3 acres of Primary water right in the said main canal is not obligated to pay any of his co-tenants or the defendants herein, any charge for maintenance and distribution other than his proportionate share of the reasonable cost of maintenance of the said main canal to the said point of general delivery mentioned in said complaint.

VI. That the said first alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Blue Cliffs Canal Company.

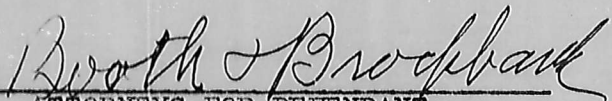
VII. That the said second alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Blue Cliffs Canal Company.

VIII. That the said third alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Blue Cliffs Canal Company.


IX. That the said alleged fourth cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Blue Cliffs Canal Company.

X. That the said Complaint as a whole or any one or more of the alleged causes of action therein set forth, does not state facts sufficient to constitute a cause of action against this defendant, Blue Cliffs Canal Company.

WHEREFORE, this defendant, Blue Cliffs Canal Company, prays that it be hence dismissed with its costs of suit herein expended.


ATTORNEYS FOR DEFENDANT
BLUE CLIFFS CANAL COMPANY.

Copy of the foregoing Demurrer to Complaint received this
6th day of May, A. D. 1926.


ATTORNEYS FOR PLAINTIFF.

6346

IN DISTRICT COURT
UTAH COUNTY, UTAH.1923
Wm Haces

Clerk

Deputy

WILSON & SON, INCORPORATED

JAN 22 1923

JAN 22 1923

WILSON & SON, INCORPORATED
WILSON & SON, INCORPORATED

JAN 22 1923

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JAN 22 1923

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND FOR
UTAH COUNTY, STATE OF UTAH

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:
CALEB TANNER,
:
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Plaintiff,
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:
-vs-
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:
Provo Reservoir Company, a
:
corporation, Provo Reservoir
:
Water Users Company, a corpo-
:
ration, Blue Cliffs Canal Com-
:
pany, a corporation, North
:
Union Irrigation Company, a
:
corporation, Provo Bench Canal
:
& Irrigation Company, a corpo-
:
ration, T. F. Wentz as Com-
:
missioner of Provo River.
:
-----eOo-----

DEMURRER TO COMPLAINT

The said defendant, the Provo Reservoir Water Users Company now comes, and appearing for itself alone and not for either of its co-defendants, demurs to the complaint of the plaintiff on file herein, and to each and every alleged cause of action of said Complaint separately, and for grounds of demurrer states:-

I. That there is a misjoinder of parties defendant in the plaintiff's alleged first cause of action for the reason that there is no showing in the said first alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Water Users Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said first alleged cause of action of said complaint.

II. That there is a misjoinder of parties defendant in the plaintiff's alleged second cause of action for the reason that there is no showing in the said second alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Water Users Reservoir Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in ~~any~~

any of the matters alleged or set forth in the said second alleged cause of action of said complaint.

III. That there is a misjoinder of parties defendant in the plaintiff's alleged third cause of action for the reason that there is no showing in the said third alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Water Users Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in any of the matters alleged or set forth in the third alleged cause of action of said complaint.

IV. That there is a misjoinder of parties defendant in the plaintiff's alleged fourth cause of action for the reason that there is no showing in the said fourth alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Water Users Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said fourth alleged cause of action of said complaint.

V. That there is a misjoinder of alleged causes of action in the said Complaint in this:

A.

(1) That the first alleged cause of action is an attempt to determine the right of the plaintiff to flow certain water rights represented by deeds given by one of the defendants, the Provo Reservoir Company, ~~through the main canal of the Provo Reservoir Company, / ~~xxxxxxx water rights~~ in the Provo Reservoir Company's irrigation system.~~

(2) There is an attempt to obtain a decree quieting plaintiff's title against the defendant for right of way and capacity in the main canal of the Provo Reservoir Company's irrigation system, for the conveyance of 20-1/3 acres of Primary water through said canal.

(3) That there is an attempt to obtain a judgment of the Court, decreeing that the plaintiff is entitled to such proportionate share of the water flowing in the main canal of the Provo Reservoir Company's irrigation system, as the plaintiff's alleged 20-1/3 acres of Primary waterright shall bear to the total number of like units in said canal.

(4) There is an attempt to quiet plaintiff's title to such proportionate share of said water as against each and all of the defendants in said cause.

(5) There is an attempt to require the defendant, T. F. Wentz, as Commissioner, to divert from the Provo River into the main canal of the Provo Reservoir Company's irrigation system, 20-1/3 acres of Primary water claimed to be owned by the plaintiff as set forth in said first alleged cause of action.

B.

(1) In the plaintiff's alleged second cause of action there is an attempt to determine the right of the plaintiff to flow 2.52 second feet of water claimed by the plaintiff, together with any other water which plaintiff may have which may be flowed through said main canal, and at all times when there shall be an unused capacity in said canal; said 2.52 second feet of water is not water that has ever belonged to the Provo Reservoir Company's irrigation system, but is water that the plaintiff has acquired from a source entirely independent from the water rights of the Provo Reservoir Company's irrigation system.

(2) There is an attempt to quiet plaintiff's title to the right to flow in said canal the said 2.52 second feet of water claimed by the plaintiff.

(3) There is an attempt to require and direct the defendant, T. F. Wentz to turn said 2.52 second feet of water out of the Provo River system into the main canal of the Provo Reservoir Company's irrigation system, and to direct said T. F. Wentz, as Commissioner to divert such water from said canal into such laterals heading into such canal as shall be designated by the plaintiff or by the plaintiff's lessees or assigns claiming to be entitled to said 2.52 second feet of water.

(4) There is an attempt to have the Court determine the liability of the plaintiff herein for flowing such water in said canal, and that it be adjudged that the plaintiff shall not be required to pay any rentals to any of the defendants herein for carrying capacity in said main canal, when there shall be any other unoccupied space therein. In other words, it is an attempt to take property belonging to some of the plaintiffs without just compensation.

C.

(1) The plaintiff's third cause of action is an attempt to restrain the defendants from giving out in speech that an acre of Primary water right as evidenced by the deeds, copies of which are attached to the plaintiff's complaint, is inferior to and less than a share of full water right stock of the Provo Reservoir Water Users Company as by it issued.

(2) In his third cause of action plaintiff attempts to obtain a decree that the plaintiff's rights for the irrigation water for the main canal for the Provo Reservoir Company's irrigation system as represented by his deeds are superior and prior in right to any and all rights of the defendants and each of them by them held or claimed through conveyances or deeds from the said Provo Reservoir Company issued subsequent to the issue of the said deeds of the plaintiff.

(3) There is an attempt to quiet plaintiff's title as against the defendants and against any and all rights and claims of the defendants through deeds issued by the Provo Reservoir Company subsequent to the issuance of the deeds of the plaintiff set out in said complaint for the irrigation of said 20-1/3 acres of land at a duty not greater than 75 acres per second foot, and that under Exhibit B plaintiff is entitled to irrigate 10 acres of land throughout the High water season on a duty of not greater than 50 acres per second foot.

(4) There is an attempt to obtain a decree requiring T. F. Wentz to divert from Provo River into the said main canal and distribute to the plaintiff or his successors in interest from the waters of said main canal a volume sufficient for the irrigation of 20-1/3 acres of land or a duty not greater than that before prayed for in said

complaint, so long as there shall be sufficient water in said main canal to supply all of the owners and holders of deeds issued by the Provo Reservoir Company from point of line down to and including the issuance of deeds attached to said complaint, such water to be distributed into such laterals as the plaintiff or his assigns or lessees may direct.

D.

(1) There is an attempt in plaintiff's alleged fourth cause of action to obtain a decree of the Court to determine the liability of the plaintiff for the cost of maintenance of said canal in paragraph 160 of said complaint described on account of the plaintiff's ownership of the 20-1/3 acres of Primary water right represented by said deeds, and his use of said canal for the conveyance of said waters therein.

(2) There is an attempt to obtain an order and judgment of the Court that plaintiff pay only such proportionate share of the costs of maintenance of said main canal to the alleged point of general delivery as mentioned in said complaint as the volume of his right therein, by reason of his alleged ownership of said 20-1/3 acres of Primary water right shall bear to the whole volume of said canal.

(3) There is an attempt to obtain a decree by the Court that the plaintiff as the owner of said 20-1/3 acres of Primary water right in the said main canal is not obligated to pay any of his co-tenants or the defendants herein, any charge for maintenance and distribution other than his proportionate share of the reasonable cost of maintenance of the said main canal to the said point of general delivery mentioned in said complaint,

(4) There is an attempt to require T. F. Wentz, as Commissioner, to pro-rate the cost of maintenance of said canal to the point of general delivery mentioned in said complaint.

VI. That the said first alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Water Users Company.

VII. That the said second alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Water Users Company.

VIII. That the said third alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Water Users Company.

IX. That the said alleged fourth cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Water Users Company.

X. That the said Complaint as a whole or any one or more of the alleged causes of action therein set forth, does not state facts sufficient to constitute a cause of action against this defendant,
Water Users
Provo Reservoir/Company.

WHEREFORE, this defendant, Provo Reservoir/Company, prays
Water Users
that it be hence dismissed with its costs of suit herein expended.

Bereth J Brockbank
ATTORNEYS FOR DEFENDANT PROVO
RESERVOIR WATER USERS COMPANY.

Copy of the foregoing Demurrer to Complaint received this
6th day of May, A. D. 1926.

Wm. H. H. H. H. H.
ATTORNEY FOR PLAINTIFF.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT IN AND
FOR UTAH COUNTY, STATE OF UTAH.

-----oOo-----
CALEB TANNER,

Plaintiff,

-vs-

Provo Reservoir Company, a :
corporation, Provo Reservoir :
Water Users Company, a corpo- :
ration, Blue Cliffs Canal Com :
pany, a corporation, North :
Union Irrigation Company, a :
corporation, Provo Bench Canal :
& Irrigation Company, a corpo :
ration, T. F. Wentz as Com- :
missioner of Provo River. :

DEMURRER TO COMPLAINT

-----oOo-----
The said defendant, the Provo Reservoir Company, now comes and appearing for itself alone and not for either of its co-defendants, demurs to the complaint of the plaintiff on file herein, and to each and every alleged cause of action of said Complaint separately, and for grounds of demurrer states:-

I. That there is a misjoinder of parties defendant in the plaintiff's alleged first cause of action for the reason that there is no showing in the said first alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said first alleged cause of action of said complaint.

II. That there is a misjoinder of parties defendant in the plaintiff's alleged second cause of action for the reason that there is no showing in the said second alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in any of the matters alleged or set forth in the said second alleged cause of action of said complaint.

III. That there is a misjoinder of parties defendant in the plaintiff's alleged third cause of action for the reason that there is no showing in the said third alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with the defendant in any of the matters alleged or set forth in the third alleged cause of action of said complaint.

IV. That there is a misjoinder of parties defendant in the plaintiff's alleged fourth cause of action for the reason that there is no showing in the said fourth alleged cause of action of any community of interest or joinder of interest of this defendant, the Provo Reservoir Company, a corporation, with any other of the defendants, or with all of the defendants combined, nor is there shown to be any action by any of the other defendants joining with this defendant in any of the matters alleged or set forth in the said fourth alleged cause of action of said complaint.

V. That there is a misjoinder of alleged causes of action in the said Complaint in this:

A. (1) That the first alleged cause of action is an attempt to determine the right of the plaintiff to flow certain water rights represented by deeds given by the defendant, the Provo Reservoir Company, ~~through the main canal of~~ ~~the Provo Reservoir Company, through the main canal of~~ the Provo Reservoir Company's irrigation system.

(2) There is an attempt to obtain a decree quieting plaintiff's title against the defendant for right of way and capacity in the main canal of the Provo Reservoir Company's irrigation system, for the conveyance of 20-1/3 acres of Primary water through said canal.

(3) That there is an attempt to obtain a judgment of the Court, decreeing that the plaintiff is entitled to such proportionate share of the water flowing in the main canal of the Provo Reservoir Company's irrigation system, as the plaintiff's alleged

20-1/3 acres of Primary water right shall bear to the total number of like units in said canal.

(4) There is an attempt to quiet plaintiff's title to such proportionate share of said water as against each and all of the defendants in said cause.

(5) There is an attempt to require the defendant, T.F. Wentz, as Commissioner, to divert from the Provo River into the main canal of the Provo Reservoir Company's irrigation system, 20-1/3 acres of Primary water claimed to be owned by the plaintiff as set forth in said first alleged cause of action.

B.

(1) In the plaintiff's alleged second cause of action there is an attempt to determine the right of the plaintiff to flow 2.52 second feet of water claimed by the plaintiff, together with any other water which plaintiff may have which may be flowed through said Main canal, and at all times when there shall be an unused capacity in said canal; said 2.52 second feet of water is not water that has ever belonged to the Provo Reservoir Company's irrigation system, but is water that the plaintiff has acquired from a source entirely independent from the water rights of the Provo Reservoir Company's irrigation system.

(2). There is an attempt to quiet plaintiff's title to the right to flow in said canal the said 2.52 second feet of water claimed by the plaintiff.

(3) There is an attempt to require and direct the defendant, T. F. Wentz to turn said 2.52 second feet of water out of the Provo River system into the main canal of the Provo Reservoir Company's irrigation system, and to direct said T. F. Wentz, as Commissioner to divert such water from said canal into such laterals heading into such canal as shall be designated by the plaintiff or by the plaintiff's lessees or assigns claiming to be entitled to said 2.52 second feet of water.

(4) There is an attempt to have the Court determine the liability of the plaintiff herein for flowing such water in said

canal, and that it be adjudged that the plaintiff shall not be required to pay any rentals to any of the defendants herein for carrying capacity in said main canal, when there shall be any other unoccupied space therein. In other words, it is an attempt to take property belonging to some of the plaintiffs without just compensation.

C.

(1) The plaintiff's third cause of action is an attempt to restrain the defendants from giving out in speech that an acre of Primary water right as evidenced by the deeds, copies of which are attached to the plaintiff's complaint, is inferior to and less than a share of full water right stock of the Provo Reservoir Water Users Company as by it issued.

(2) In his third cause of action plaintiff attempts to obtain a decree that the plaintiff's rights for the irrigation water for the main canal for the Provo Reservoir Company's irrigation system as represented by his deeds are superior and prior in right to any and all rights of the defendants and each of them by them held or claimed through conveyances or deeds from the said Provo Reservoir Company issued subsequent to the issue of the said deeds of the plaintiff

(3) There is an attempt to quiet plaintiff's title as against the defendants and against any and all rights and claims of the defendants through deeds issued by the Provo Reservoir Company subsequent to the issuance of the deeds of the plaintiff set out in said complaint for the irrigation of said $20\text{-}1/3$ acres of land at a duty not greater than 75 acres per second foot, and that under Exhibit B plaintiff is entitled to irrigate 10 acres of land throughout the High water season on a duty of not greater than 50 acres per second foot.

(4) There is an attempt to obtain a decree requiring T. F. Wentz to divert from Provo River into the said main canal and distribute to the plaintiff or his successors in interest from the waters of said main canal a volume sufficient for the irrigation of $20\text{-}1/3$ acres of land or a duty not greater than that before prayed for in said complaint, so long as there shall be sufficient water in

said main canal to supply all of the owners and holders of deeds issued by the Provo Reservoir Company from point of line down to and including the issuance of deeds attached to said complaint, such water to be distributed into such laterals as the plaintiff or his assigns or lessees may direct.

D.

(1) There is an attempt in plaintiff's alleged fourth cause of action to obtain a decree of the Court to determine the liability of the plaintiff for the cost of maintenance of said canal in paragraph 160 of said complaint described on account of the plaintiff's ownership of the 20-1/3 acres of Primary water right represented by said deeds, and his use of said canal for the conveyance of said water therein.

(2) There is an attempt to obtain an order and judgment of the Court that plaintiff pay only such proportionate share of the costs of maintenance of said main canal to the alleged point of general delivery as mentioned in said complaint as the volume of his right therein, by reason of his alleged ownership of said 20-1/3 acres of Primary water right shall bear to the whole volume of said canal.

(3) There is an attempt to obtain a decree by the Court that the plaintiff as the owner of said 20-1/3 acres of Primary water right in the said main canal is not obligated to pay any of his co-tenants or the defendants herein, any charge for maintenance and distribution other than his proportionate share of the reasonable cost of maintenance of the said main canal to the said point of general delivery mentioned in said complaint.

(4) There is an attempt to require T. F. Wentz, as Commissioner, to pro-rate the cost of maintenance of said canal to the point of general delivery mentioned in said complaint.

VI. That the said first alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Company.

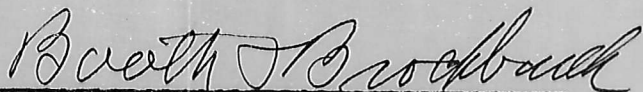
VII. That the said second alleged cause of action of said complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Company.

VIII. That the said third alleged cause of action of said Complaint does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Company.

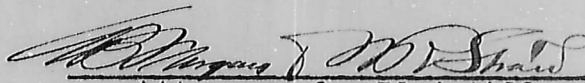
IX. That the said alleged fourth cause of action does not state facts sufficient to constitute a cause of action against this defendant, the Provo Reservoir Company.

X. That the said Complaint as a whole, or any one of more of the alleged causes of action therein set forth, does not state facts sufficient to constitute a cause of action against this defendant, Provo Reservoir Company.

WHEREFORE, this defendant, Provo Reservoir Company, prays that it be hence dismissed with its costs of suit herein expended.


Attorneys for Defendant Provo Reservoir Company.

Copy of the foregoing Demurrer to Complaint received this 6th day of May, A. D. 1926.


Attorneys for Plaintiff.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH.

-----oOo-----
Caleb Tanner, :
 :
 :
 Plaintiff, :
 :
 :
 -vs- :
 :
 :
 Provo Reservoir Company, a cor- : ORDER EXTENDING TIME
 poration, Provo Reservoir Water :
 Users Company, a corporation, :
 Blue Cliffs Canal Company, a cor- :
 poration, North Union Irrigation :
 Company, a corporation, Provo :
 Bench Canal & Irrigation Company :
 a corporation, T. F. Wentz as :
 Commissioner of Provo River, :
 :
 Defendants. :
 :
 -----oOo-----

In the above entitled matter, application having been made to the Court, and good cause being shown therefor, it is ordered that the defendants, Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliffs Canal Company, a corporation, and each of them, be, and they are hereby given until and including the 6th of May, 1926 in which to answer or otherwise plead to the Complaint on file herein.

Dated this 1st day of May, A. D. 1926.

Elias Hansen
J U D G E.

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34323

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH.

-----oOo-----
Caleb Tanner,

Plaintiff,

-vs-

Provo Reservoir Company, a corpo- :
ration, Provo Reservoir Water :
Users Company, a corporation, Blue :
Cliffs Canal Company, a corpora- :
tion, North Union Irrigation Com- :
pany, a corporation, Provo Bench :
Canal & Irrigation Company, a :
corporation, T. F. Wentz as Com- :
missioner of Provo River, :

Defendants. :
-----eOo-----

ORDER EXTENDING TIME

In the above entitled matter, application having been made to the Court, and good cause being shown therefor, it is ordered that the defendants, Provo Reservoir Company, a corporation, Provo Reservoir Water Users Company, a corporation, Blue Cliffs Canal Company, a corporation, and each of them, be, and they are hereby given until and including the 1st of May, 1926 in which to answer or otherwise plead to the Complaint on file herein.

Dated this 6th day of April, A. D. 1926.

George P. Parker
J U D G E.

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH,
IN AND FOR UTAH COUNTY.

-----X
Caleb Tanner, :
 :
Plaintiff, :
 :
vs. : ORDER OVERRULING DEMURRERS.
 :
Provo Reservoir Company, :
 :
et al., :
 :
Defendants. :
 :
-----X

In this action the defendants, Blue Cliffs Canal Company, Provo Reservoir Waterusers Company, Provo Reservoir Company, have each filed separate demurrers, which said demurrers are both special and general. The plaintiff in his complaint has set forth four alleged causes of action, the first being for the purpose of fixing the rights, if any, of the plaintiff in and to the use of 20-1/3 acres of primary water right evidenced by a deed which is attached to the complaint, the second being for the purpose of determining the right, if any, which the plaintiff claims to flow 2.52 cubic feet per second of water in a canal specifically mentioned and described in plaintiff's complaint, the third being an action for the purpose, as would appear, of fixing the relative rights of the plaintiff's water as represented by the 20-1/3 acres of primary water right with respect to shares of water in the Provo Reservoir Waterusers Company, and the fourth being for the purpose of determining the plaintiff's right to use a certain canal for the conveyance of the 20-1/3 acres of primary water right and to determine the amount of maintenance costs of said canal, if any, which shall be paid by the plaintiff herein.

Each of the said defendants has demurred to each of the alleged causes of action, upon the ground that there is no community of interest with the other defendants and that therefore there is a misjoinder of parties defendants.

Section 3485, Compiled Laws of Utah, 1917, provides as follows:

"In any action hereafter commenced for the protection of rights acquired of water under the laws of this state the plaintiff may make any or all persons who have diverted water from the same stream or source, parties to such action, and the Court may in one judgment settle the relative priorities of all the parties to such action."

The complaint filed in this action is very lengthy and has a number of repetitions, and the Court is of the opinion that the matters set forth in the four causes of action in plaintiff's complaint might well have been stated in three causes of action, one to determine the right to the 20-1/3 acres of primary water, which might well have included the amount of assessment, if any, that should be levied against this alleged water right, to pay for the expenses of the distribution thereof, one for the alleged right to flow the 2.52 second feet of water in the canal system described in plaintiff's complaint, and one to flow the 20-1/3 acres of primary water right in the canal system described in plaintiff's complaint, but at the same time there is of course no objection to stating a cause of action in two separate and distinct causes of action, provided, of course, the causes of action are such that they may be properly joined in the same action.

A reading of each of the four causes of action in substance alleges that each of the parties defendant claims some interest in the waters in controversy, and therefore the Court is of the opinion, and so holds, that the plaintiff has a right and it is the better practice to join all of the defendants in one cause of action and thus avoid a multiplicity

The said defendants also demur specially upon the ground that there is a misjoinder of causes of action in that there is an attempt to have the Court determine the right, if any, of the plaintiff to a water right in one cause of action and in another cause of action to determine the right, if any, of the plaintiff to flow water through the irrigation canal described in plaintiff's complaint. This phase of the case is discussed in Vol. III, Sec. 1543, at p. 2772, of Kinney on Irrigation, where the author uses the following language, and in the note cites cases to support the text:

"Again, in the same action, the title to both the water right and to the ditch or canal through which it flows may be adjudicated, and a decree made by the Court quieting the title in the respective owners of both. As was held by the Colorado court, where the trial court only decided the rights as to the water, 'the trial court should have retained jurisdiction to settle all the rights of the parties in one action, and it ought not to require the plaintiff to bring another to have determined the relative rights of the parties in and to this strip of land.' In the pleadings, however, the separate causes of action must be separately stated."

The law is likewise well settled that in a suit to quiet the right to use a canal system, two causes of action are properly joined even though two separate water rights are claimed and a right-of-way is claimed in the same canal for the flowing of both of the water rights. In fact the law could not well be otherwise, because if one claims two separate easements for two separate water rights, from the very nature of the case it is necessary to have both of the claims before the court in order that the court may make a complete determination of all of the rights of the parties before the court in and to the use of the canal system.

From what has been said it follows that defendants' demurrers to plaintiff's complaint, upon both the grounds that there is a misjoinder of parties defendant and a misjoinder of

causes of action, should be and the same and each of them are overruled.

The defendants above mentioned have also demurred to each of the causes of action upon the ground that they and each of them do not state facts sufficient to constitute a cause of action. In actions to determine and fix water rights the law is of course well settled, as stated on page 2764 of Vol. III of Kinney on Irrigation, that there need not be an actual interference with plaintiff's right before an action may be brought. The assertion of an adverse claim is sufficient. In each of the causes of action set out in plaintiff's complaint there are allegations to the effect that each and all of the defendants in said action have asserted some claim adverse to the claims made by the plaintiff herein, and therefore it follows that the general demurrers and each of the general demurrers of the defendants above named should be and they are hereby overruled.

The defendants above named and each of them are given fifteen days in which to prepare, serve, and file answer in this action.

Dated this 15th day of November, 1926.

By the Court,

Elias Hansen

J U D G E .

6346

NOV 15 1928
Wm. Hales
8 B. Dastrop

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, IN
AND FOR UTAH COUNTY, STATE OF UTAH.

CALEB TANNER,

Plaintiff,

vs.

Provo Reservoir Company,
a corporation, Provo
Reservoir Water Users
Company, a corporation,
Blue Cliff Canal Company,
a corporation, North Union
Irrigation Company, a cor-
poration, Provo Bench Canal
& Irrigation Company, a cor-
poration, T. F. Webtz as
Commissioner of Provo River,

Defendants.

6346
A N S W E R

Come now Provo Bench Canal & Irrigation
Company, a corporation, and North Union Irrigation Company,
a corporation, defendants in the above entitled action and
for answer to plaintiff's complaint admit, deny and allege
as follows:

These defendants claim no right to the
canal of the Provo Reservoir Company, defendant herein, or of
the Provo Reservoir Water Users Company, as said canal is
described in Paragraph 16 of the first cause of action of said
complaint.

Further answering said complaint these
defendants allege that they claim no right, title or interest
whatsoever under the contract of Jens C. Jensen with the Provo
Reservoir Company, or to the water rights referred to in
Paragraph 23 of the second cause of action of said complaint,
except as set forth in the decree in Civil action No. 2888 on
file in this court.

WHEREFORE defendants pray that they be

dismissed hence, with their costs incurred herein.

Ray & Rawlins

Attorneys for Defendants.

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

JOHN H. STRATTON, being first duly sworn, deposes and says: I am an officer, to-wit, President, of the Provo Bench Canal & Irrigation Company and make this verification for and on behalf of said corporation, that I have read the foregoing answer, know the contents thereof and that the same is true except as to the matters therein stated upon information and belief, and as to those matters I believe it to be true.

John H. Stratton

Subscribed and sworn to before me this 10th day of May, 1926.

Robert Rawlins

Notary Public residing at
Salt Lake City, Utah.

My commission expires _____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH.

Caleb Tanner, Plaintiff,

VS

6346

NOTICE.

Provo Reservoir Company, a
Corporation; Provo Reservoir Water Users
Company, a corporation; Blue Cliff Canal
Company, a corporation; North Union Irrigation
Company, a corporation; Provo Bench Canal
and Irrigation Company, a corporation,
and T.W. Wentz as Commissioner of Provo
River.

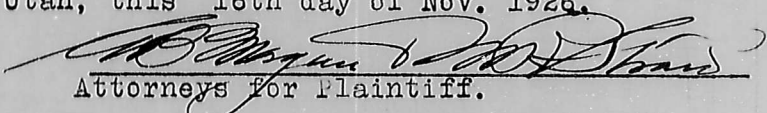
Defendants.

To Blue Cliff Canal Company, a corporation;
To Provo Reservoir Water Users Company, a corporation;
To Provo Reservoir Company, a corporation and
To Booth and Brockbank, Attorneys for said Blue Cliff
Canal Company, Provo Reservoir Water Users Company and
Provo Reservoir Company, defendants;

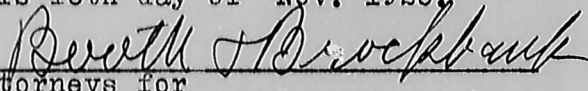
Take Notice;

That on the 15th day of November, 1926, the above entitled
Court made and entered an order herein overruling each and
all of the several demurrers herein interposed by the said
Blue Cliff Canal Company, a corporation; Provo Reservoir Water
Users Company, a corporation, and Provo Reservoir Company,
a corporation, and the said named defendant corporations
and each of them were granted 15 days in which to prepare
serve and file their several answers herein.

Dated Provo, Utah, this 16th day of Nov. 1926.


Attorneys for Plaintiff.

Received copy of above Notice
this 16th day of Nov. 1926.


Attorneys for

Blue Cliff Canal Company, a corporation;
Provo Reservoir Water Users Company, a corporation, and
Provo Reservoir Company, a corporation.

000

No 6346 Civil

ORDER EXTENDING TIME TO ANSWER

000

Elias Hansen
JUDGE.

6346

IN DISTRICT COURT
UTAH CO. UTAH.

* FILED *

NOV 28 1928

Wm. Hales
E. B. Lastrup

RECORD 2

PAGE 503

1000000

DECEMBER 28TH 1928

THE DISTRICT COURT

IN ORDER TO REVEAL THE TRUE NATURE OF THE COMBINATION OF

AND THAT SUCH THE PERSONS KNOWN TO THE COURT AS BEING PART OF THE

RELATION. IT IS HEREBY ORDERED THAT THE DEFENDANTS BE RECALLED

IN THE ABOVE MENTIONED MANNER. SO ORDERED.

-----000-----

Defendants:

FOR ELIAS HAGE
L. E. KERRY, JR. COMMISSIONER
BENJ. S. COLLEGEYON, JR.
WERNERSON WILSON SENIOR CON-
S. COLLEGEYON, ELIAS
ELIAS WERNERSON CONSUMERS

-AB-

ORDER EXTENDING TIME TO VENUE

DEFENDANT:

NO CASE START

CIVIL DIVISION

STATE OF UTAH, IN AND FOR ELIAS CONSUMERS

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

IN THE DISTRICT COURT OF UTAH COUNTY,
STATE OF UTAH.

----oOo----

CALEB TANNER,

Plaintiff.

vs.

Provo Reservoir Company, a
corporation, Provo Reservoir
Water Users Company, a corpo-
ration, Blue Cliff Canal Com-
pany, a corporation, North
Union Irrigation Company, a
corporation, Provo Bench Canal
and Irrigation Company, a cor-
poration, T. F. Wentz, as Com-
missioner of Provo River.

Defendants.

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:

:

No. 6346 CIVIL.

ANSWER OF PROVO RESERVOIR
WATER USERS COMPANY AND

Now comes the defendant, Provo Reservoir Water Users
Company, a corporation, and for itself alone and not for any
of the other defendants, answers the Complaint filed herein:-

As to the first cause of action in said Complaint the
defendant admits, denies and alleges as follows:-

1. Admits all of the allegations of paragraphs 1 to 5
thereof inclusive.

2. The defendant admits that the defendant T. F.
Wentz now is, and for many years last past he has been, the
duly appointed, qualified and acting Water Commissioner for
Provo River under the appointment and orders of the above en-
titled Court in that civil action known and designated as-
Case No. 2888- in the above entitled court. That said de-
fendant, T. F. Wentz, now is, and for many years last past he
has been, under the appointment and orders of the above en-
titled court, in active charge as said commissioner of the
control, regulation and distribution of waters of said Provo

River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the defendant, T. F. Wentz, as said commissioner, to control, regulate and distribute waters of said Provo River in the main channel and bed of said river, and from the main channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River. But the defendant denies that the said T. F. Wentz as said commissioner has any duty or right to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in Case -No. 2888 Civil- in this Court, and denies that this court has any right or power to direct the said T. F. Wentz, as commissioner or otherwise, to control, regulate or distribute any of the waters of said Provo River, except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. The defendant admits the allegations of paragraphs 7, 8, 9, 9½, 10, 11, 12, 13, 14, 15, 16, and 17.

4. As to paragraph 18, the defendant admits the first sentence thereof ending with the word "herein." And admits that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company, any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and ^{denies} ~~admits~~ that the whole of the interest of the Provo Reservoir Water Users Company in the Irrigation System of the said Provo Reservoir Company or in the canal described in paragraph 16 of the Complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System.

Defendant denies all of the allegations of said paragraph

18, not herein above admitted.

5. The defendant denies the allegations of paragraph 19.

6. As to paragraph 20, the defendant believes the allegations therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20, the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendants herein, and as to these allegations the defendant denies that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal," as hereinafter in paragraphs 15 and 16 set forth.

7. The defendant denies each and every allegation of paragraph 21 of said first cause of action.

8. The defendant admits the allegations of paragraph 22 of said first cause of action.

9. The defendant admits that it asserts and claims that the plaintiff owns no capacity in and no right to flow or convey the water represented by the Deeds exhibits "B", "D" and "E" through the main canal of Provo Reservoir Company's, Provo River Irrigation System for the reason hereinafter in this answer to the first cause of action in this complaint set forth, but denies that such assertions and claims are wrongful or in violation of any right of the plaintiff.

10. The defendant denies that the plaintiff is entitled to the use of such proportions of the waters of the Provo River heretofore or now owned by the defendants Provo Reservoir Company, or Provo Reservoir Water Users Company, as $20\frac{1}{3}$ acres of Primary water-right bears to the total number of like units of Primary water-right so disposed of by said Provo Reservoir Company, for the reason that at the time of and since the or-

ganization of the Provo Reservoir Water Users Company of the Provo Reservoir Company has conveyed to all of the Users of Consumers of water under its Deeds who have joined and became members and stock-holders of Provo Reservoir Water Users Company, water-right sufficient to give to such users a different rate of duty of water thereby enlarging the water-rights of the Stock-holders of said Corporation over and above what they were entitled to under their Deeds which were identical with those issued to Jens C. Jensen under whom the plaintiff herein claims title.

11. Further answering said first cause of action, the defendant alleges that the plaintiff, Caleb Tanner, was prior to the year 1913, the state engineer of the State of Utah and that he was at all of the times hereinafter mentioned an irrigation engineer of great ability and of good repute and had knowledge of the rivers matters pertaining to the flow of the water of the Provo River mentioned in the Complaint herein, and that he had been for many years prior to the organization of the Provo Reservoir Company interested in said River and its irrigation system as then in use.

12. That defendant, Provo Reservoir Company knowing of the ability of said Caleb Tanner as an irrigation engineer and knowing of his study and knowledge of the said Provo River System and rights of individuals to the use of water of said river for all purposes, in the year 1913 said defendant engaged and employed the said Tanner as its agent and engineer for the purpose of securing for said Provo Reservoir Company water-rights by appropriation and otherwise in and to the water of said Provo River and to secure rights-of-way for said Provo Reservoir Company for ditches, canals and diverting channels, and to give said Provo Reservoir Company advice, counsel and information for its benefit in the appropriation, diversion, application, distribution, and use of water by the said Provo Reservoir Company

and those with whom it might contract with for the sale of rights owned by it for the use of waters of the said Provo River and its tributaries and that the said plaintiff, Caleb Tanner, during all of the time from the year A.D. 1913 until the 31 day of December, A.D., 1921, was employed by the said Provo Reservoir Company and paid by it for services rendered by him under the said employment.

13. That during the year A.D. 1915 the said Provo Reservoir Company had made contracts with divers persons for rights to the use of waters of the said Provo River for irrigation purposes to the amount of approximately 40 second feet, among whom was the grantor of the plaintiff for the 20-1/3 second feet referred to in the plaintiffs first cause of action, said water to be delivered to the said Provo Reservoir Company's grantees through the Iona Canal, the intake of which is from the said Provo Reservoir Company's main canal at a point near the center of Sec. 12, Tp. 6 South, of range 2 East, Salt Lake Base Meridian in Utah County, Utah.

14. That by reason of the great length, cost of construction and maintenance of the said Iona Canal and the extra loss by evaporation and seepage of the water in said Iona Canal many of the users thereof and as the said Provo Reservoir Company then believed all of the users thereof asked the said Provo Reservoir Company to make arrangements to deliver the water contracted for by them through the Provo Bench Canal and Irrigation Company's Canal, which said canals diverts water from the said Provo River at a point on the right bank of said Provo River about two miles below the intake of said Provo Reservoir Company's main canal as described in the complaint herein.

15. That on or about the _____ day of _____ A.D. 1915, after the said Provo Reservoir Company had conferred with the plaintiff herein then acting as its counselor and advisor in all matters relating to the diversion and distribution of waters con-

tracted for by it to the users thereof, and after being advised by the plaintiff so to do entered into an agreement with the Provo Bench Canal and Irrigation Company to convey the quantity of water theretofore used and thereafter to be used by said Provo Reservoir Company's vendees through the said Iona Canal, to be carried through and delivered to the said vendees through the said Provo Bench and Irrigation Company's Canal. And that thereafter and so long as the water contracted for by Jens C. Jensen, Plaintiffs grantor, was used by the said Jens C. Jensen, it was delivered to him through the said Provo Bench Canal and Irrigation Company's Canal with his acquiescence and consent and as this defendant is informed and verily believes at his instance and request, and this defendant alleges that the 20-1/3 acres of water-right to which the said Jens C. Jensen was entitled was delivered into the said Provo Bench Canal and Irrigation Company's Canal under the arrangements made by Provo Reservoir Company with Provo Bench Canal and Irrigation Company until the year A.D. 1916.

16. That in the year A.D. 1916 the said Provo Reservoir Company for the sole purpose of supplying the persons who had originally had their water delivered to them through the Iona Canal with water delivered to them through the Provo Bench Canal and Irrigation Company's Canal, with the plaintiff herein, entered into an agreement with the said Provo Bench Canal and Irrigation Company's Canal to enlarge its canal so that said Provo Reservoir Company would have carrying capacity therein to supply water to those with whom it had contracted and who had originally had their water delivered to them through the Iona Canal, and that Provo Reservoir Company on its part expended in said enlargement approximately \$30,000.00 and thereby acquired a right to flow the said waters through the said canal, the said users having each and all made arrangements with the said Provo Bench Canal and Irrigation Company and North Union Canal Company to deliver and distribute to them at their several private laterals the quantity of

water to which they were severally entitled, and that during each and every year since A.D. 1916 the 20-1/3 second feet of water to which the said Jens C. Jensen was entitled and to which the plaintiff claims he is now entitled has been delivered by the Provo Reservoir Company, the Board of Control, and the Provo Reservoir Water Users Company into the Provo Bench Canal Company's Canal for the use and benefit of the said Jens C. Jensen ~~or~~ his successor or successors in interest.

17. That the Iona Canal was a lateral from the Provo Reservoir Company's main canal and was constructed, owned and regulated by the persons, including Jens C. Jensen, who held contracts with the Provo Reservoir Company, defendant, for the sale and purchase of water-right, to be delivered through its irrigation system.

18. That immediately after the Provo Reservoir Company arranged with Provo Bench Canal and Irrigation Company to convey and deliver through its canal the water formerly delivered at the intake of the Iona Canal, the owners including Jens C. Jensen, the plaintiffs grantor, of the 20-1/3 acres water-right claimed for herein by plaintiff, abandoned said Iona lateral and it was soon filled in, its flumes and gates became broken, decayed, and destroyed and it has never since been used by any of its owners whose lands lie below the Provo Bench Canal and Irrigation Company's Canal and laterals.

19. That the 20-1/3 acres of Primary water-right claimed by plaintiff in the first cause of action herein, were awarded to Provo Reservoir Company by reason of the application thereof in irrigation of the lands of said Jens C. Jensen, plaintiffs grantor, upon the lands of said Jens C. Jensen, situated in Sec. 22, Tp. 6 South, Range 2 East, of the Salt Lake Meridian, all of which lands lie to the South of the Provo Bench Canal and its laterals, and said water was continuously used upon said lands from the date of the contracts for the purchase thereof between the said Jens C.

Jensen and Provo Reservoir Company, as shown by plaintiffs exhibits "A" and "C" and the date of the Deed plaintiffs exhibit "E" until the sale thereof by the said Jens C. Jensen to the plaintiff, and all thereof were distributed to him through the Provo Bench Canal each and every year during his use thereof, as aforesaid since A.D. 1916, and that 5 acres thereof were distributed to him through said canal from the time of his purchase thereof, November 29th, 1918 until his sale to plaintiff as alleged in plaintiff's complaint herein on the 3rd day of March, A.D. 1925, and that ever since said date the said water-right has been turned into the said Provo Bench Canal each and every year except 1926 for the use of plaintiff. ^{and 1925}

20. That by reason of the acts of said Jens C. Jensen, and others to whom water was distributed through the Iona Canal lateral aforesaid, as herein above set forth, and by reason of the large expenditures of money by the Provo Reservoir Company in order to obtain for themselves a right to flow said water through the Provo Bench Canal, and North Union Canal and their laterals as above set forth all of said expenditures having been made under the direction, control, and advice of the plaintiff herein and all of which was well known to the plaintiff at the time he purchased from the said Jens C. Jensen, the said water-right, the said Jens C. Jensen, plaintiff, and their grantees and successors in interest are barred and estopped from claiming any right to have delivered to them any of the said water through any other source or from any other point than the Provo Bench Canal, and North Union Canal and their laterals.

21. That in the Decree in Case No. 2888 Civil- filed in this Court on the 2nd day of May A.D. 1921, paragraph 116 is as follows:-

"It is further ordered, adjudged and decreed, that for the purpose of maintaining the volume of flow of Provo River available for use of the parties, and to maintain to the parties hereto the respective rights herein awarded and decreed, none of the parties shall change the place of use of said water so as to cause

the seepage or drainage therefrom to be diverted away from the channel of said river; or canals, or from the lands heretofore irrigated thereby."

22. That as this defendant is informed and believes and therefore alleges that the sole purpose of the plaintiff in purchasing the said 20-1/3 acres of water-right was that he might change the place of use thereof and divert the same through plaintiffs Main Canal and thereby seek to acquire rights that had been forfeited and abandoned by his predecessor, Jens C. Jensen, and at the same time seek to acquire other interests that were never owned or claimed by his said grantor, such as a "tenancy-in-common" with this defendant, and Provo Reservoir Water Users Company in the Main Canal of the Provo Reservoir Company's Irrigation System, and particularly to acquire such "tenancy-in-common" in its head-gate, canal, tunnels, and pipe-line from the so called Heiselt Dam referred to in paragraph 16 of the first cause of action herein, but such rights can only be obtained by change of the place of use of the said 20-1/3 acres water-right, and an abandonment of the right acquired by plaintiff at great expense to the Provo Reservoir Company to flow the said 20-1/3 acres of water-right through the Provo Bench Canal and that by provisions of paragraph 116 in the Decree in Case No. 2888 Civil- the said Jens C. Jensen and the plaintiff, as his successor, are prohibited from changing the place of use of said water.

This defendant generally denies each and every allegation of said first cause of action not hereinabove admitted or denied.

ANSWER TO SECOND CAUSE OF ACTION

In answer to the second cause of action herein ~~this~~ defendant admits, denies, and alleges as follows:-

1. It admits all of the allegations of paragraphs 1 to 5 thereof and inclusive, and admits all of the allegations of paragraphs 7, 8, 9, 9½, 10, 11, 12, 13, 14, 15, 16, and 17.

2. As to paragraph 6 this defendant admits that the de-

defendant, T. F. Wentz now is, and for many years last past he has been the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in the civil action known and designated as -Case No. 2888- in the above entitled Court. That said defendant, T. F. Wentz, now is, and for many years last past he has been, under the appointment and orders of the above entitled Court, in active charge as said commissioner, of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the defendant, T. F. Wentz, as said commissioner, to control, regulate and distribute waters of said Provo River in the main channel and bed of said river and from the main channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River. But this defendant denies that the said T. F. Wentz as said commissioner has any right ~~to~~ or duty to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in -Cast No. 2888 Civil- in this Court, and denies that this court has any right or power to direct the said T. F. Wentz as commissioner or otherwise to control, regulate or distribute any of the waters of said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. Answering paragraph 18 this defendant admits the first sentence thereof, ending with the work "herein." And admits that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jens C. Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and ^{denies} ~~admits~~ that the whole of the interest of the Provo

Reservoir Water Users Company in the irrigation System of the said Provo Reservoir Company or in the Canal described in paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System.

Defendant denies all of the allegations of said paragraph 18 not herein admitted.

4. This defendant denies all the allegations of paragraph 19.

5. As to paragraph 20 this defendant believes the allegations therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20 the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendants herein, and as to these allegations, this defendant denies that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal."

6. This defendant denies each and every allegation of paragraph 21.

7. This defendant admits the allegations of paragraph 22.

8. This defendant admits the allegations of paragraph 23.

9. As to paragraph 24, this defendant denies each and every allegation therein and specifically denies that the plaintiff is a "joint-owner" or a "tenant-in-common" with this defendant in the canal described in paragraph 16, or in any part thereof.

10. Answering paragraph 25, this defendant admits that the plaintiff desires to use the main canal constructed by Provo Reservoir Company as described in paragraph 16, to carry his 2.52 second feet of water to the intake of the Iona Canal, to be used by divers persons, and this defendant denies each and every allegation

of said paragraph 25 not in this paragraph admitted.

11. Answering paragraph 26, this defendant admits that it asserts and claims, and it now alleges that plaintiff owns no capacity in and no right to convey the 2.52 second feet of water or any part thereof through the main canal of Provo Reservoir Company's Provo River Irrigation System, and denies that plaintiff has any right or interest in or to the canal described in paragraph 16, and this defendant denies each and every allegation of said paragraph 26 not in this paragraph admitted.

12. Answering paragraph 27, this defendant admits that T. F. Wentz, as Water Commissioner, appointed by this Court has supervision and control of the distribution of water from the Provo River into the Main Canal of Provo Reservoir Irrigation System as described in paragraph 16, and that he refuses ~~and~~ threatens to continue to refuse to divert any of the waters owned by the plaintiff into said canal, and admits that the said 2.52 second feet of water has been awarded to plaintiff by the decree in -Case No. 2888 Civil- in this Court, and that said T. F. Wentz, as water Commissioner, has the right to divert said water from the Provo River for the use of plaintiff, But this defendant alleges that the said refusal of T. F. Wentz was not wrongful; that the said T. F. Wentz has no right to divert the said waters into a private canal or pipe-line owned and controlled by others than the plaintiff without first being authorized so to do by the owners of such canal or pipe-line.

13. This defendant admits that its claims are adverse to plaintiff, and denies each and every ^{other} allegation of paragraph 28.

14. Further answering said second cause of action, this defendant alleges that the plaintiff is the owner in his own right of _____ capacity in the Provo Bench Canal, which canal has its intake on the right bank of the said Provo River at a point near the Olmstead plant of the Utah Power and Light Company. Said capacity and said canal was acquired by the plaintiff

after long litigation for a right to enlarge and great expense in enlarging said canal for the purpose of conveying through said canal 10 second feet of water of which 10 second feet of water the 2.52 second feet mentioned in this cause of action were a part, and that for many years last past the said 2.52 second feet of water has been diverted from the Provo River into the said canal and has been used upon lands lying below said canal and its laterals.

15. That in the Decree in -Case No. 2888 Civil- by which said 2.52 second feet of water was awarded and decreed to plaintiff, paragraph 116 is as follows:-

"It is further ordered, adjudged and decreed, that for the purpose of maintaining the volume of flow of Provo River available for use of the parties, and maintain to the parties hereto the respective rights herein awarded and decreed, none of the parties shall change the place of use of said water so as to cause the seepage or drainage therefrom to be diverted away from the channel of said river or canals, or from the lands heretofore irrigated thereby."

16. That by this cause of action, plaintiff seeks the right to change the point of diversion of the said 2.52 second feet of water from the Provo River and to change the place of use thereof and to use the same for irrigation upon lands where it heretofore has not been used, in violation of the provisions of said decree as set forth in paragraph 116 thereof.

17. That this defendant is informed and believes and therefore alleges that the sole purpose of plaintiff in purchasing the 20-1/3 acres of water-right in which he is, in his first cause of action herein, seeking the right to flow through the Provo Reservoir Company's Main Canal was to enable him to claim a right as "tenant-in-common" with the defendant herein in said canal, that he might bring an action to determine that he was a "tenant-in-common", hoping to establish a rule in this cause whereby he might flow water through any canal already built without any cost or expense to himself in any way. And that plaintiff has another action now at issue against the defendants herein Provo Reservoir Company, and Provo Reservoir Water Users Company, and T. F. Wentz, in this

court for other and additional claims to flow water through said Provo Reservoir Company's Main Canal, at issue and untried wherein he claims a right to flow 5 second feet of water through said canal, said 5 second feet of water which heretofore if applied to any beneficial use whatever, has been diverted through the said Provo Bench Canal, and in the application to the State Engineer for the 5 second feet of water the plaintiff asserts that the said water is to be diverted through the said Provo Bench Canal. Said action being file No. 6449 Civil in this Court.

This defendant generally denies each and every ^{other} allegation of said second cause of action not herein admitted or denied.

ANSWER TO THIRD CAUSE OF ACTION

In answer to the third cause of action herein, this defendant admits, denies and alleges as follows:-

1. It admits all of the allegations if paragraphs 1 to 5 thereof inclusive and admits all of the allegations of paragraphs 7 to 17 thereof inclusive.

2. As to paragraph 6, this defendant admits that the defendant, T. F. Wentz, now is, and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and order of the above entitled Court in that civil action known and designated as Case No. 2888 in the above entitled Court. That said defendant, T. F. Wentz, now is, and for many years last past he has been, under the appointment and orders of the above entitled court, in active charge, as said Commissioner, of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the defendant, T. F. Wentz, as said Commissioner, to control, regulate and distribute waters of said Provo River in the Main Channel and bed of said river and from the Main Channel and bed of said river into various canals and diversion works diverting, taking and re-

ceiving water from said Provo River. But this defendant denies that the said T. F. Wentz as said commissioner has any duty or right to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in case No. 2888 Civil, in this court, and denies that this Court has any right or power to direct ~~ex~~ the said T. F. Wentz as commissioner or otherwise to control, regulate or distribute any of the waters of said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. As to paragraph 18, this defendant admits the first sentence thereof, ending with the work "herein." And admits that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and ~~admits~~ ^{denies} that the whole of the interest of the Provo Reservoir Water Users Company in the Irrigation System of the said Provo Reservoir Company or in the Canal described in paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-right in the Provo Reservoir Company's Irrigation System.

Defendant denies all of the allegations of said paragraph 18 not herein above admitted.

4. This defendant denies all of the allegations of paragraph 19.

5. As to paragraph 20, this defendant believes the allegations therein to be a reiteration of some of the allegations in paragraph 18 except that in paragraph 20, the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with the defendant herein, and as to these allegations, this defendant denies that the plaintiff is a "joint-owner" or a "tenant-in-common" in and to

all interests of said irrigation system or in and to any interest in any Canal constructed by the Provo Reservoir Company except such interest as Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the "Provo Bench Canal and Irrigation Company's Canal," as hereinbefore in paragraphs 15 and 16 of the answer to the First Cause of Action set forth.

6. As to paragraphs 21, 22, 23:-

This defendant denies each and every allegation of paragraph 21 of said third cause of action.

This defendant admits the allegations of paragraph 22 of said third cause of action.

This defendant admits that it asserts and claims that the plaintiff owns no capacity in and no right to flow or convey the water represented by the Deeds exhibits "B" and "E" through the Main Canal of Provo Reservoir Company's, Provo Reservoir Irrigation System for the reasons hereinafter in this answer to the third cause of action in this complaint set forth, but denies that such assertions and claims are wrongful or in violation of any right of the plaintiff.

6. Answering paragraph 24, this defendant alleges that under the Preambles and Resolutions of Provo Reservoir Company, for the years 1909 and 1911 the holder of a share of Primary water-right is entitled to not more than $1/75$ of a second foot per acre at any time, pro rata with all other owners of such right, and that as to such owners the water may be reduced to $1/150$ second foot per acre pro rata during the low water season. The resolutions and articles of agreement of the Provo Reservoir Water Users Company provide for several classes of stock, and that share of full water-right therein is entitled to not more than $1/75$ of a second foot per acre at any time but ~~that~~ the holder of a full share of stock, which may be reduced to not less than $1/100$ of a second foot per acre at any time thereby making a share of full water-right in the said corporation of more value

as an irrigation right than is one ^{acre} ~~share~~ of Primary water-right under the Deeds issued by the Provo Reservoir Company, to Jens C. Jensen.

This defendant denies the allegations of paragraph 24 not herein admitted.

8. This defendant admits the allegations of paragraph 25.

9. This defendant admits the allegations of paragraph 26.

10. Answering paragraph 27, this defendant admits that the plaintiff, under the contracts and Deeds set forth as exhibits attached to the complaint, has a right to the use of sufficient water of Provo Reservoir Irrigation System to irrigate 20-1/3 acres of land, on a duty at any time, not greater than 75 acres per second foot pro rata with all other owners, under Deeds to Primary water-right from the Provo Reservoir Company, which may be reduced during low water season to 150 acres per second foot.

This defendant denies all of the allegations of paragraph 27 not herein admitted.

11. Answering paragraph 28, this defendant admits that Provo Reservoir Company subsequent to the recording of exhibits "A" and "C" issued many Deeds for water-right and that Provo Reservoir Water Users Company have acquired and owns practically all of the rights under said Deeds so issued. This defendant denies every allegation of said paragraph 28 not in this paragraph admitted.

12. This defendant admits the allegations of paragraphs 29 and 30.

13. Answering paragraph 31, this defendant admits that it asserts and claims that the shares of full water-right stock issued by Provo Reservoir Water Users Company are superior to and represent a better water-right than the Primary water-right claimed by plaintiff under the Deeds attached to the complaint for the reason that at all time of and since the organization of the Provo Reservoir Water Users Company, the Provo Reservoir Company

has conveyed to all of the users or consumers of water under its Deeds who have joined and became members and stock holders of Provo Reservoir Water Users Company, water-rights sufficient to give to such users a different rate of duty of water thereby enlarging the water thereby enlarging the water-rights of the stock holders of said Corporation over and above what they were entitled to under their Deeds which were identical with those issued to Jens C. Jensen under whom the plaintiff herein claims title.

This defendant denies each and every allegation of said paragraph 31 not in this paragraph admitted.

14. This defendant denies all allegations of paragraph 32.

This defendant generally denies each and every allegation of said third cause of action not herein above admitted or denied.

ANSWER TO FOURTH CAUSE OF ACTION

In answer to the fourth cause of action herein, this defendant admits, denies and alleges as follows:-

1. It admits all of the allegations of paragraphs 1 to 5 thereof inclusive and admits all of the allegations of paragraphs 7 to 17 thereof inclusive.

2. Answering paragraph 6, this defendant admits that the defendant T. F. Wentz now is, and for many years last past he has been, the duly appointed, qualified and acting Water Commissioner for Provo River under the appointment and orders of the above entitled Court in that civil action known and designated as case No. 2888 Civil in this court. That said defendant, T. F. Wentz now is, and for many years last past he has been, under the appointment and orders of the above entitled court, in active charge as said Commissioner of the control, regulation and distribution of waters of said Provo River into various canals and irrigation works receiving water from said Provo River. That it now is, and for many years last past it has been, the duty of the ~~data~~ defendant, T. F. Wentz, as said Commissioner, to control, regulate and distribute

waters of said Provo River in the Main Channel and bed of said river from the Main Channel and bed of said river into various canals and diversion works diverting, taking and receiving water from said Provo River. But this defendant denies that the said T. F. Wentz as said commissioner has any duty of right to control, regulate or distribute the waters of the said Provo River except as provided by the Decree in case No. 2888 Civil- in this court, and denies that this Court has any right or power to direct the said T. F. Wentz as commissioner or otherwise to control, regulate or distribute any of the waters of the said Provo River except the waters adjudicated by said decree and to the parties thereto or their successors in interest.

3. Answering paragraph 18, this defendant admits the first sentence thereof ending with the word "herein." And admits that neither Jens C. Jensen nor the plaintiff herein has assigned to the defendant, Provo Reservoir Water Users Company, any of the water-rights represented by the Deeds, copies of which are attached to the complaint, and admits that neither said Jensen nor the plaintiff have at any time or at all authorized or directed said defendant to distribute water represented by said Deeds, and ~~admits~~ ^{denies} that the whole of the interest of the Provo Water Users Company in the Irrigation System of the said Provo Reservoir Company or in the Canal described in Paragraph 16 of the complaint has been acquired by transfers thereof to said Provo Reservoir Water Users Company by owners of water-rights in the Provo Reservoir Company's Irrigation System, Defendant denies all of the allegations of said paragraph 18 not hereinabove admitted.

4. This defendant denies each and every allegation of paragraph 19.

5. Answering paragraph 20, this defendant believes the allegations therein to be a reiteration of some of the allegations of paragraph 18, except that in paragraph 20 the plaintiff claims to be a "joint-owner" and a "tenant-in-common" with this defend-

ant herein, and as to such allegations, this defendant denies that the plaintiff is a "joint-owner" or a tenant-in-common" in or to all interests of said irrigation system, or in or to any interest in any canal constructed by the Provo Reservoir Company, except such interest as the Provo Reservoir Company may have acquired by reason of its enlargement of the Canal known as the Provo Bench Canal and Irrigation Company's Canal, as hereinbefore in paragraphs 15 and 16 of the answer to the first cause of action set forth.

6. This defendant denies each and every allegation of paragraph 21.

7. This defendant admits the allegations of paragraphs 22, 23, 24, 25 and 26 of the fourth cause of action.

8. This defendant denies each and every allegation of paragraphs 27, 28, and 29 of the fourth cause of action.

9. This defendant denies each and every allegation of said fourth cause of action not herein admitted.

And as a further defense to the complaint of the plaintiff, this defendant alleges:

1. That from the _____ day of _____, 1910, until the 3rd day of March, 1920, the defendant, Provo Reservoir Company had exercised control and regulation of the waters of the Provo Reservoir Company's Provo River Irrigation System and controlled and distributed said waters to the persons entitled to receive waters from said system for irrigation purposes including the said Jens C. Jensen; and said Jens C. Jensen paid the Provo Reservoir Company the maintenance charges of \$1.50 per acre for each and every one of said years.

2. That from the 3rd day of March, A.D. 1920, until the 2nd day of July, 1924, the management, control, regulation and operation of said Provo Reservoir Company's Irrigation System and the regulation and distribution of the waters flowing therein was under the control of the owners of water-rights in said

system including the said Jens C. Jensen in proportion to the interests that they respectively held in said system, said owners of such water-rights, including the said Jens C. Jensen, being represented by certain persons known as the Temporary Board of Control of the Provo Reservoir Company's Irrigation System, appointed by said owners of said water-rights at a meeting duly called and held for that purpose.

3. That this defendant, the Provo Reservoir Water Users Company, was duly organized as a corporation on the 2nd day of July, 1924, for the general purpose of acquiring water rights for irrigation and other purposes and for distributing and disposing of the same; and for the further purpose of acquiring, owning, using, controlling, supervising and operating water, water rights, water right projects, and also reservoirs, dams, diversion works, canals, laterals and other works used in connection with water right projects, and particularly for the purpose of managing, controlling, regulating, operating and distributing to the stockholders in said company and its stockholders as members thereof and of acquiring, for the benefit of its stockholders the waters of such stockholders purchased from the Provo Reservoir Company such further and additional water and water rights as might be necessary or beneficial; and on said 2nd day of July, 1924, the said Temporary Board of Control surrendered and relinquished to this defendant the control, regulation, and distribution of the waters of the Provo Reservoir Company's Provo River Irrigation System belonging to the stockholders of said Provo Reservoir Water Users Company, and since said 2nd day of July, 1924, this defendant has had and exercised the management, control, regulation and operation and the distribution of the water from the Provo Reservoir Company's Irrigation System which had been acquired and owned by the stockholders of said Provo Reservoir Water Users Company.

4. That on or about the _____ day of _____ 1916,

the said Jens C. Jensen, predecessor in interest of the plaintiff, requested the defendant, Provo Reservoir Company, to deliver the waters to which he was entitled under and by virtue of his contracts with said defendant and set out in plaintiff's complaint, into the canal of the Provo Bench Canal and Irrigation Company and that from said date until the 18th day of February, 1920, the said Jens C. Jensen continually had taken, received and had distributed and delivered to him his said water rights through the canal of the Provo Bench Canal and Irrigation Company.

5. That on or about the 18th day of February, 1920, the said Jens C. Jensen and a large number of other people, in writing requested the defendant, Provo Reservoir Company, to permanently continue the change in delivery of water represented by the said deeds referred to in plaintiff's complaint from the canal of the Provo Reservoir Company into the canal of the Provo Bench Canal and Irrigation Company on Provo Bench in Utah County, Utah.

6. That the defendant, Provo Reservoir Company, pursuant to the said Petition of said Jens C. Jensen and other people, by the expenditure of a large amount of money, obtained carrying capacity in the canal of the Provo Bench Canal and Irrigation Company, and thereafter until January 1st, 1920, delivered the said water of Jens C. Jensen, represented by said deeds, into the said canal of the Provo Bench Canal and Irrigation Company, and that thereafter, to-wit, on or about the 3rd day of March, 1920, the said Board of Control of the water users of the said Provo Reservoir Company's Irrigation System, took control of the distribution and regulation of the water of said Provo Reservoir Company's Irrigation system, including the water thus turned and distributed through the canal of the said Provo Bench Canal and Irrigation Company, and ever since the 3rd day of March, 1920, until the organization of this defendant company, the said Board of Control,

representing the water users of the Provo Reservoir Company's Irrigation System, continued to deliver to the said Jens C. Jensen, and his successor, the water represented by the said deeds referred to in plaintiff's complaint, and that the distribution of said water to said Jens C. Jensen was made by the said Board of Control for the years of 1920, 1921, 1922, 1923, and 1924, and the said Jens C. Jensen paid the said Board of Control his pro-rata share of the expenses of regulating, managing, and controlling the said irrigation system, and the distribution of the water thereof for the years 1920, 1921, 1922, 1923, and 1924, and until the year 1925; that during the years 1925 and 1926 said waters have been distributed to the said plaintiff, as successor in interest of the said Jens C. Jensen, through the main canal of the Provo Reservoir Company under and pursuant to a temporary order made and entered by this Court with the understanding, and providing, that it should be, and was, without any prejudice to the rights of any of the parties defendant herein.

7. This defendant states that if this defendant shall now be compelled to change the place of delivery of said water represented by the said deeds given to Jens C. Jensen from the Provo Bench Canal and Irrigation Company's canal where it now is, pursuant to the request of the plaintiff, and shall be compelled to provide capacity for the conveyance of said water through the canal of the Provo Reservoir Company, it will require the expenditure of additional amounts of money to be paid by this defendant for which it has received and will receive no compensation whatsoever, and will be unequitable, unjust, and against the rights of this defendant, Provo Reservoir Water Users Company.

8. That at the time of the organization of this defendant corporation and for many years prior thereto, as above set forth and continuously after the organization of this corporation until the year 1925, the plaintiff and his predecessor

did receive and had received said waters through the canal of the Provo Bench Canal and Irrigation Company; that this defendant at the time of its organization and continuously thereafter until 1925, relied upon the facts and the situation as they existed at the time of its organization and believed and does now believe that plaintiff and his predecessor had permanently and deliberately abandoned and surrendered any and all claims they, or either of them, had or might have to receive his water or to have the same delivered or distributed to him, in any way or in any manner or place except through the canal of the Provo Bench Canal and Irrigation Company; that at the time of the organization of this defendant company, the plaintiff and his predecessor in interest, the said Jens C. Jensen, refused to join this corporation or to become a member thereof or subscribe for stock therein; and never has been and is not now a member of, or stockholder in, this defendant corporation; that this defendant believed from the aforesaid facts that the plaintiff and his predecessor in interest had permanently abandoned and surrendered any and all claims or interest in or to any canals, ditches or laterals of the Provo Reservoir Company or of this defendant, which belief was induced and caused by the aforesaid acts of the plaintiff and his predecessor in interest, in requesting said change in the place of delivery; in receiving his said waters through the canal of the Provo Bench Canal and Irrigation Company; in paying therefor; in refusing to join or subscribe for stock in this defendant corporation, and relying upon such belief and such acts and conduct on the part of the plaintiff and his predecessor in interest, this defendant made no provision for, and acquired no capacity for, plaintiffs water in the canal of the Provo Reservoir Company or in its canal at the time of its organization or since, and this defendant acquired and owns and controls only such capacity in said ditch and canal as is necessary to carry the waters of the members of, and stockholders in, this

defendant corporation; and the plaintiff, by reason of the acts and conduct as aforesaid in so requesting the change in the place of delivery of his water; and in causing the expenditure of the said large sum of money to provide capacity and facilities for delivering the waters to him through the canal of the Provo Bench Canal and Irrigation Company; and in so taking and receiving his water through such canal of the Provo Bench Canal and Irrigation Company; and in paying for the distribution through said canal pro rata with the users in the Provo Reservoir Canal ; and in refusing to join, or subscribe for stock in this defendant corporation, is estopped as against this defendant from asserting any rights in said canal or from requiring this defendant to change, or permit him to change his place of diversion.

9. That this defendant corporation for and on behalf of its stockholders has purchased more water and water rights than were owned at the time of its organization and that such additional water and water rights so purchased by this defendant for the benefit of its stockholders are more than sufficient to use any and all capacity in said canal owned, controlled or available to this defendant and that this defendant therefore has no unused capacity in said canal.

WHEREFORE, this defendant prays that plaintiff take nothing by his complaint, herein. That judgment be entered in favor of this defendant and against plaintiff. "No cause of Action" as to each of plaintiff's four alleged causes of action,-

This defendant further prays for judgment against the plaintiff, that plaintiff, his successors in interest, and their agents, servants, employees and attorneys, and any and all persons claiming or to claim, by, through or under them or any of them, be enjoined and restrained forever from setting up or claiming any right or interest whatsoever of, in or to any part or portion of the canals of this defendant or to the right in or

to the canals, or the use thereof, of the Provo Reservoir
Company canal as owned, controlled or operated by or available
for use, or used by, this defendant.

This defendant prays for such other and further relief as
to the court may seem meet and equitable.

A. J. Evans.

Martin M. Lagan

attorney for Defendant
Provo Reservoir District
Water Association.

STATE OF UTAH, :
COUNTY OF UTAH. : SS.

R. J. Murdock being first duly sworn says
he is an officer of Provo Reservoir Company, a corporation,
one of the defendants in the foregoing answer, to-wit:

Secretary thereof, and that he makes
this verification for and in behalf of the said defendant ;
that he has read the said answer and knows the contents
thereof, and that it is true of his own knowledge except as
to matters therein stated on information and belief, and
that as to those matters he verily believes it to be true.



Subscribed and sworn to before
me this 4th day of January
A.D. 1927.

R. J. Murdock

Martin M. Asman
Notary Public.
Residing at:

Received copy this 5th day of January, 1927.

M. P. Straw
A. B. Morgan
Attorneys for plaintiff

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IN DIST. COURT
UTAH CO., UTAH

* FILED *

JAN 5 - 1927

E. B. Rustup
Deputy

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